
THE LEGAL MECHANISMS FOR PROTECTING VICTIMS OF BLOOD TRANSFUSION CONTAMINATED WITH HIV

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ABSTRACT

The process of blood transfusion is considered one of the major negative factors in the transmission of the HIV virus. This occurs when patients receive contaminated blood, especially before the implementation of blood testing programs in healthcare institutions, medical facilities, and blood transfusion centers in countries. Consequently, many victims of AIDS have been unable to file legal claims against these institutions due to societal norms and perceptions of the disease. It is important to note that blood transfusion centers are responsible for achieving accurate results, as they are obligated to collect and store disease-free blood and viruses for patients in need, such as those undergoing surgical procedures, organ transplants, and individuals requiring blood transfusions following car accidents or those with hemophilia or kidney failure.

Therefore, a blood transfusion center that aims to provide clean blood must analyze donated blood using precise biological standards and techniques to eliminate any possibility of error in the results. This ensures the preservation of healthy blood. Conversely, relying on ineffective techniques by some laboratories can lead to inaccurate results, which may hold the center responsible for the transmission of contaminated blood and potentially result in the death of the recipient. Determining liability can be challenging, making the issue of compensation difficult to resolve.

Keywords: AIDS, contaminated blood, mechanisms, responsibility.

INTRODUCTION

The AIDS pandemic has claimed numerous lives worldwide, ranking as the fourth leading cause of death according to the Joint United Nations Programme on HIV/AIDS (UNAIDS). In 1998, out of the estimated 33,400,000 people living with the virus globally, 250,000 infected individuals died, with 2,000,000 of them in Africa alone. By 2007, the estimated number of people living with HIV/AIDS reached approximately 33,000,000, with 29,500,000 individuals in developing countries and 2,000,000 individuals in industrialized nations .

The transmission of the virus occurs through various means, and blood transfusion can be one of them. Blood transfusion is a critical procedure relied upon to save lives and improve patient health. However, healthcare facilities authorized to collect and store disease-free, clean blood face technical factors that can hinder their efforts. These factors often involve the lack of utilization of modern biological techniques for virus detection, failure to adhere to precautions and safety measures, or negligence. Consequently, incorrect results may be obtained, such as false-negative results, which are initially positive and require the discarded blood bag to be destroyed rather than being used for another individual's benefit. From our perspective, this is considered a negative donation.

This may result in the transmission of contaminated blood to those in need of it. Therefore, if the transfused blood or its derivatives are found to be contaminated, the responsibility lies with those who are responsible for it. If a person is infected with the virus through blood transfusion, they have the right to file a civil compensation lawsuit against the party responsible for the infection, which often has serious consequences that may lead to the death of the affected individual.

Based on this, the topic becomes highly significant for two reasons: first, the spread and increasing prevalence of the disease, and second, considering blood transfusion as a route for virus transmission. Therefore, the issue of compensating for the damages resulting from infection with this virus becomes a concern for the affected individuals and legal professionals. The transmission of contaminated blood causes specific and exceptional harm, not to mention the difficulty in determining liability, making the issue of compensation challenging to resolve. In this context, the blood transfused according to necessary medical procedures exposes patients to the risk of virus transmission, especially when they are in a vulnerable position under the influence of doctors, who may lack the ability to accept or reject or even verify the safety of the transfused blood. Consequently, legal experts have sought to provide legal protection that compensates the victims of contaminated blood through what is known as negative donation.

The aforementioned raises the following issue:

- What are the legal compensation systems or legal protections for victims of blood transfusion contaminated with the AIDS virus, and what mechanisms can be considered complementary to compensate for such damages?

To answer these questions, we will address the topic based on two axes:

1. Legal compensation systems for victims of HIV transmission:

- Firstly, compensation system according to the rules of civil liability.
- Secondly, compensation system according to the civil liability insurance.

2. Complementary mechanisms for compensating victims of HIV transmission:

- Firstly, compensation through guarantee funds.
- Secondly, state's obligation to compensate victims.

The analytical approach will be adopted to reflect the Algerian legislator's vision and perspective in finding ways to compensate the damages suffered by victims of AIDS virus transmission through blood donation processes in various healthcare facilities. Additionally, comparative methodology has occasionally been used to enrich the subject matter.

1- Legal compensation systems for victims of HIV transmission.

Compensation aims to rectify the damage suffered in general. However, the injuries inflicted on the victim are usually severe and may result in their death. In cases of compensation lawsuits, the judge has the ability to determine the amount of compensation. However, this differs when compensating victims of AIDS. The assessment of damages varies from one stage to another, and thus the judge cannot definitively determine the amount of compensation. This is mainly because the extent of the damage differs between the stage of infection and the actual disease. Consequently, the judge can allow the infected individual to retain the right to claim compensation within a reasonable period, subject to review. This period does not exceed the silent period of the disease .

In order to compensate these victims who have been infected through contaminated blood transfusion, it is essential to understand the basis on which this right is grounded. To address this, we have divided this matter into two subcategories:

1. Compensation System According to The Principles of Civil Liability:

The elements of civil liability consist of fault, damage, and causation. Compensation is considered a fundamental consequence of liability, and it should be noted that the basis for compensation for individuals with HIV is the presence of damage. If such damage exists, compensation is warranted. If the damage is absent, compensation is also absent. This is because the absence of damage removes any connection to fault, and liability can exist even without fault.

Therefore, in the context of operations involving the transfer of contaminated blood, there is a unique situation involving the involvement of multiple parties in its occurrence and the accumulation of factors leading to liability. Consequently, the liability of various individuals can be invoked, including the physician who conducted the blood transfusion procedure, as well as the responsibility of the physician's assistants, such as the laboratory doctor at the blood collection, analysis, and storage center. Additionally, the liability of the hospital or even the blood transfusion center can be considered.

Meanwhile, the French judiciary initially started with the presumption of fault, which was necessary to establish

liability. However, it shifted towards contractual liability, settling on the obligation to guarantee safety, which falls within the scope of the commitment to achieve a result. This is because the commitment to guarantee safety aligns more with the advancements of the era and the requirements of medical progress .

Accordingly, the French judiciary adopted the principle of obligating those involved in blood transfusion to ensure the safety of the patient receiving the transfusion. They are considered to have a duty to transfer or deliver disease-free and virus-free blood. The mere proof of failure to achieve the desired outcome is sufficient to establish their liability . As the interest of the victim necessitates the judiciary's concern in order to obtain appropriate compensation that compensates for the harm caused by the transfusion of contaminated blood, French courts have progressively determined liability, ultimately considering the civil liability imposed on the various individuals involved in the blood transfusion process as a form of liability without fault (non-culpable liability) based on the concept of damage . This is also referred to in French jurisprudence as liability based on risk, provided that there is a direct causal link between the transfusion of blood and the subsequent harm to the recipient. This explains why the transfused contaminated blood is the sole source of HIV infection without the presence of any other source .

The problem of attributing the infection to the blood transfusion process became evident, and in this regard, we have identified two types of attribution: medical attribution and legal attribution .

Regarding medical attribution: It is the responsibility of medical experts to investigate and inquire about the presence or absence of virus infection. They also provide evidence that the transfused blood was contaminated, thereby excluding all other causes that may lead to the disease, especially if there was a blood transfusion involved. However, HIV infection takes a long time to manifest, and therefore, detection and analysis may not be conclusive. It is a disease in which the element of time plays an effective and crucial role in attributing it to the blood transfusion process.

As for legal attribution (legal causation): The most important aspect is to prove that the infection could only have occurred through the transfusion of contaminated blood. This allows us to infer that the harm is a direct result of the transfusion of blood infected with the virus. The infection becomes a legal presumption, and it protects the interests of the victim. Judges usually rely on this presumption when a person has undergone a blood transfusion prior to the appearance of the disease within a reasonable timeframe for its effects to surface. The liability remains unless there is an external cause that breaks the causal link.

The affected individual here can seek recourse against all those who contributed to the harm (transmission of HIV infection) or against one of them, and that individual can then seek recourse against the others to the extent of compensation proportional to each party's contribution to transmitting the disease .

When medical expertise fails to establish the scientific certainty of causation between the disease infection and the blood transfusion process, the judge is compelled to rely on legal causation when sufficient strong indications are proven that the disease infection was solely the result of the blood transfusion. This led the French judiciary to particularly resort to the theory of "perte de chance" (loss of chance) to address doubts and uncertainties regarding the causal relationship.

Various entities are liable for compensation according to the principles of civil liability in France, where the state has become responsible for compensating accidents related to blood transfusion, including the transmission of HIV infection . This is due to its responsibility for blood transfusion centers and hospitals, which means its full responsibility for safeguarding public health.

The establishment of jurisdiction for compensation in the administrative judiciary for blood transfusion centers and hospitals, while other parties responsible for compensation, including doctors, private hospitals, road accident perpetrators, and donors, are subject to the supreme judiciary.

On the other hand, concerning Algerian legislation, we find that civil liability arising from blood transfusion operations has not been subjected to specific regulation. It falls under the general rules stipulated in the Algerian Civil Law, specifically Article 124. This reflects the civil liability of the physician, which is primarily governed by that article: "Any act committed by a person in error resulting in harm to others obliges the person who caused it to provide compensation." This means compensating the patient for any damages, whether material or moral, resulting from medical errors of various types and forms, and it is the responsibility of the liable party. To address such issues, the Algerian legislator has established a specialized body tasked with highlighting medical errors when they exist. This is embodied in the National Council for Medical Ethics, which performs technical consultation duties by identifying and highlighting professional errors in medical liability claims.

Among the types of errors, we have the error in blood transfusion (transfusing contaminated blood), which results in harm such as contracting AIDS. In such cases, the responsible party, whether it is the physician or their assistants, the hospital, or the blood transfusion center, is obligated to provide compensation. However,

when multiple parties are involved in the transfusion of contaminated blood, the question arises: Who is responsible for compensation?

The Algerian legislator has not provided a definitive solution to this issue. There is no specific provision governing this situation within the general legislation (Civil Law) or the specific legislation (Health Law 18/11). Therefore, the judge, when considering a civil lawsuit for compensation, applies the general rules of civil law. This legal gap leaves both the judge and the injured party perplexed about who should be responsible for compensating the victim and rectifying the damage. The French judiciary faced a similar situation after the issuance of the law on March 4, 2002, which reintroduced the concept of error as the basis for liability. The judiciary faced multiple fronts where lawsuits were filed to claim compensation, and these lawsuits encountered difficulties due to the gradual onset of symptoms in AIDS, which can take a long time (ranging from two to twelve years, a period that can lead to the complete collapse of the immune system of the infected person). This perplexed the judge: Should compensation be granted in full, in part, or should it be assessed judicially while preserving the right of the injured party to obtain full compensation after the onset of the disease and the manifestation of symptoms ?

Traditional rules of civil liability are inherently complex and difficult to detail, as the commitment of blood banks, transfusion centers, hospitals, and physicians is essentially a commitment to achieving a result that ensures the patient's safety. As for the commitment of an ordinary physician, it is a commitment to providing a reasonable standard of care that minimizes the risk of errors.

On the other hand, victims may receive compensation that does not fully compensate for the incurred damage, not to mention the challenge of the insolvency of doctors or hospitals and their inability to pay the substantial compensation resulting from such serious damages. In light of all these circumstances, the need to establish sound foundations for compensating the victims has become an urgent matter, as they strive to develop a system that reassures the affected party about receiving adequate compensation while considering the gradual nature of the onset of AIDS in order to address the deficiency experienced by civil liability in its conventional approaches. Consequently, collective systems have emerged with the aim of supporting the compensatory function of liability, which vary in their forms. This can be achieved through a liability insurance system, or in the form of supplementary systems such as guarantee funds, or the state itself may assume this obligation to compensate and remedy the harm suffered by AIDS victims.

2. Compensation according to the liability insurance system

The liability insurance system is considered one of the collective systems for compensation. It is a product of the modern era, based on remarkable scientific advancements. Numerous juristic attempts have been made since 1930 to establish an insurance system for doctors to cover their civil liability for medical errors. Worth mentioning are the efforts of Professor Cruzon, Professor Henry Dizwall , and the jurist TUNC, who proposed a mandatory insurance system in the field of medical professions, which he called insurance against all medical risks. This concept was adopted by both medicine and law, particularly in the field of blood transfusion.

Some argue that when one resorts to insurance as a liability system, it instills confidence in obtaining compensation rights, especially in the presence of another solidarity party alongside the primary party responsible for the damage . Therefore, the insurance contract provides four essential elements: risk, financial performance of the insurer, the premium paid by the insured, and the realization of the interest.

The French legislator, in its law issued on March 4, 2002, concerning patients' rights, made it mandatory for doctors and private healthcare institutions to have liability insurance. Therefore, insurance has become a compulsory requirement for practicing medicine .

This mandatory insurance also included the field of blood transfusion, and liability in this context was considered non-fault-based, making it an exception. It is based on the concept of the obligation to achieve a result, as indicated by the French legislator in the June 1980 regulations, which stipulated that insurance in the field of blood transfusion covers the risks arising from the transfusion center's liability towards blood donors and beneficiaries. It also covers the risks arising from the distribution of blood or its derivatives.

In line with that, the Algerian legislator adopted the insurance system and deemed it mandatory through the review of Decree 07-95 dated January 25, 1995, related to insurances. Article 167 of the decree stipulated this requirement, justifying the imposition of mandatory insurance for professionals in the medical field due to the existence of a significant risk that affects society due to the prevalence of damages.

Regarding members of the medical profession, the Algerian legislator subjected their liability to the general rules of civil law without addressing the topic of insurance, merely referring to the rights of the insured or the injured party in the Social Insurance Law 11-83 issued on July 2, 1983 . Meanwhile, the state takes

responsibility for guaranteeing the rights of the injured party, which can be seen through its provision of treatment expenses for AIDS patients as a disease affecting individuals without investigating its source. The affected individual may experience total or partial disability, and in such cases, the state assumes responsibility through social security coverage for their treatment expenses without considering the cause or methods of infection, whether through contaminated blood transfusion or otherwise.

To avoid complications related to infection through blood transfusion, the mandatory insurance also covers the field of blood transfusion. Therefore, transfusion centers are obligated and required to have insurance coverage under Article 169 of the amended and supplementary Decree 07-95 related to insurances, which states: "Institutions involved in the withdrawal or alteration of human blood for medical use must subscribe to insurance against the harmful consequences that blood donors and recipients may face." This requirement is evident in the content of the text, as it is absolute and mandatory, encompassing all risks arising from blood transfusion operations, including the transmission of blood contaminated with the human immunodeficiency virus (HIV). The legislator applied the general rules found in civil law and Algerian insurance law regarding such cases, without specifying specific rules governing them.

However, as a general rule, the civil liability of blood transfusion centers is not absolute, as it has its limits. Considering the nature and specificity of AIDS as a chronic disease that requires a long period for its symptoms to appear, how can the responsibility of the party involved in the contaminated blood transfusion process be determined in this case? What is the solution if the insurance contract is not valid at the time the disease appears (due to contract expiration or even the subsequent guarantee)? Does the risk occur as soon as the disease symptoms appear during the validity of the contract for the blood recipient, thus implying the fault of the responsible insurer, as they have an obligation to ensure safety? Or does the risk occur by claiming compensation through a direct lawsuit ?

Therefore, the inadequacy of this guarantee arising from the insurance contract is evident in protecting the victims of contaminated blood transfusion. Civil liability is a flexible system and a comprehensive concept that often makes it difficult for insurance to enforce it, especially regarding damages of an ambiguous and variable nature with gradual manifestation. All of this leads us to the creation of a special system to compensate victims of HIV infection resulting from contaminated blood transfusion, relieving blood transfusion centers from financial burdens while attempting to spare these victims the arduous judicial proceedings, which usually take a long time and often do not result in sufficient reparation. In this regard, the French legislator introduced such a system by excluding the liability of blood transfusion centers and their institutions from insurance coverage through the issuance of a specific legislation under Law 1406/91, issued on December 31, 1991. This law established a special fund as a legal mechanism and means to compensate AIDS victims resulting from blood transfusion, which we will discuss further in the second request, along with the mechanism of general guarantee for compensation.

2- Complementary Mechanisms for Compensating AIDS Victims:

Despite the advantages offered by the concept of insurance, it is still far from addressing the problem of liability. Insurance does not always cover all damages, and the responsible party may not enter into an insurance contract for their liability. Therefore, there is an urgent need to fill the gaps that insurance may have as a fundamental mechanism for compensation. Thus, the path to finding complementary compensation mechanisms to the liability insurance system became necessary in the field of blood transfusion operations, especially in cases of HIV transmission. Some countries have sought to establish a guarantee fund system as a compensation mechanism alongside the general guarantee mechanism that the state adheres to in certain cases.

1. Compensation through Guarantee Funds:

In order to avoid many practical problems such as the failure to enter into an insurance contract by the responsible party, inadequate insurance coverage to compensate for damages, the expenses required for legal claims, or the complexity of determining liability due to the involvement of multiple parties responsible for the harm, the establishment of guarantee funds has been introduced as a complementary system for compensating victims for damages . The French legislator has adopted this system in various fields such as car accidents and counterterrorism, considering it a cooperative coverage for all risks and damages affecting society. It serves as a tool to facilitate compensation for victims when compared to the liability insurance system.

Therefore, the French legislator decided to implement this system to compensate victims of AIDS resulting from contaminated blood transfusions under Law No. 1406/91, issued on December 31, 1991 . This was due to the widespread transmission of the infection through blood transfusion operations, especially during the period between 1980 and October 1985.

The compensation fund is an entity with legal personality, and its establishment law specifies its sources of funding. To be eligible for the benefits of this fund, the following conditions must be met:

1. The injury suffered must be caused by the actual HIV virus, meaning transmission of contaminated blood carrying the HIV virus and not any other disease. The infection must result from a blood transfusion or one of its derivatives, and not from any other cause.
2. The blood transfusion that caused the virus infection must have occurred in France. Otherwise, the victim is not entitled to claim compensation from the fund.

The law 91/1406 defines all the procedures that the victim must undertake in order to obtain compensation from the fund . According to the legislator's judgment in this text, the compensation granted to the victim is considered substantial if the person is in the advanced stage of the disease, indicating a complete collapse of the immune system. However, if the person is only a carrier of the virus and has not reached the stage of illness, they are entitled to receive only three-quarters of the designated compensation, with the remainder deferred until reaching the advanced stage of the disease.

The law of December 31, 1991, regulated the disputes that arise between the victim and the compensation fund. It designated the Court of Appeal of Paris as the sole authority to adjudicate these cases. The victim must resort to the court by filing a complaint within two months in the following situations:

1. If the fund completely rejects the compensation request.
2. If the designated compensation amount from the fund is lower than the amount requested by the victim.
3. If the fund fails to make any offer to the victim within the specified period.

Additionally, the concept of the compensation committee responsible for managing the fund expanded to define the concept of an affected person. It considered individuals who have a special relationship with the affected person as direct victims (spouse, partner, child born to an infected mother). Furthermore, the court went even further in its ruling, stating that the guarantee fund is responsible for compensating surgeons who are injured during an operation on an HIV-infected patient .

It is evident from the aforementioned that the French legislator recognized the gravity of the situation and sought to address it by establishing the compensation fund, demonstrating a spirit of solidarity with the victims of the disease who are helpless in this regard. The situation remained unchanged until the enactment of the law on March 4, 2002, concerning patient rights and the quality of the healthcare system. This law introduced a different approach, deviating from the previous French legislative method, by establishing another compensation system based on what is known as national solidarity.

On the other hand, we find that the Algerian legislator only mandates the creation of such funds in specific cases, similar to the catastrophic damages mentioned in the mandatory insurance system. The most important of these funds are the Fund for Compensation of Terrorism Victims, the Automobile and Bodily Injury Guarantee Fund, and the National Social Security Fund, among others. Among them is the Emergency and Medical Treatment Activities Fund, which is a guarantee fund responsible for medical and therapeutic activities in various fields. It was established by a joint ministerial decision issued on August 19, 2002 . This fund aims to compensate for medical expenses resulting from exceptional events such as disasters, natural calamities, epidemics, poisonings, fires, traffic accidents, and airplane crashes, as well as any unexpected accidents in general.

What is most noticeable is that the Algerian legislator did not include specific compensation for victims of AIDS through contaminated blood transfusion within the mandate of this fund, despite its name, the Fund for Medical and Therapeutic Activities, which encompasses blood transfusion. This leads us to conclude that the Algerian legislator did not give even minimal attention to the category of individuals who are victims of negligence in medical work, without mentioning them explicitly within any legislation related to medical or public health practices. Despite the legislator's emphasis on the necessity of thorough examination and biological analysis of donated blood and donors in ministerial decisions related to blood transfusion or what is known as blood injection, as stipulated in the ministerial decision dated May 24, 1998, which includes mandatory screening for HIV, hepatitis C and B, and syphilis in blood donation.

Therefore, guarantee funds as a compensation system are a mechanism aimed at covering all damages, especially severe damages that cannot be remedied through civil liability or even insurance. They cover damages outside any basis of liability, whether it is due to negligence or risks. They function as a self-standing system based on collective financial guarantee, with the aim of filling the gaps of the civil liability system or insurance.

However, the damages caused by transfusion of viruses through contaminated blood, such as AIDS, are severe and serious at the same time. It is not sufficient to rely solely on compensation funds for comprehensive

coverage. This necessitates the involvement of the state as the sole economic representative, considering it as a public authority capable of addressing damages not based on liability but on what is known as national or social solidarity.

2. The State's Commitment to Compensate Victims.

The principle of collective compensation embodies a fundamental basis for the state's responsibility to bear the burden of compensating for damages resulting from the risks of medical practices, including blood transfusions. It has a precautionary nature on one hand and a necessity on the other. The precautionary nature of intervention is manifested in the fact that it only becomes apparent and prominent when other compensation mechanisms are absent or incapable of compensating for the risks. The necessary nature of the state's contribution is evident in its inevitable intervention to meet the demands of justice sought by the victims of harm resulting from those medical practices.

In the context of compensating for risks arising from medical practices, such as compensating victims of AIDS, we find that the state adopts a compensation policy as a right for the victims, not merely as a grant to them. The role of the state here is unique, as it confronts temporary medical disasters that affect a segment of society. The compensation is based on the principle of humanitarian concern, aiming to assist individuals in difficult situations. Therefore, it is essential for the state to be the first to initiate this solidarity.

The duty of national solidarity remains primarily an ethical obligation rather than a legal one, as it is not suitable to serve as the basis for the state's commitment to compensate victims of damages resulting from medical acts such as blood transfusion contaminated with diseases, unless it transforms into a legal obligation. This transformation has indeed occurred in France, where the French legislator approved the establishment of a compensation system based on national solidarity.

The concept of social and national solidarity is built on the premise that:

- Redressing harm is not a right but rather assistance provided by the state to those in need.
- The compensation in this context is of a precautionary nature, as previously mentioned.

In accordance with the demands of medical accident victims' associations, the law concerning patients' rights was issued in 2002, which amended the French Health Protection Law. In Article 1142/01, paragraph three, it states: "The liability of physicians, institutions, departments, and medical bodies cannot be established... Medical accidents grant the right to the injured party to obtain compensation in the name of national solidarity when these accidents are directly related to preventive, diagnostic, or therapeutic acts, and when they result in abnormal consequences representing a degree of severity..." This law was enacted, significantly emphasizing the responsibility of doctors and healthcare professionals, which has created several challenges in terms of insurance coverage for this liability on the ground.

As a result, the French legislator intervened again on December 30, 2002, by issuing a supplementary law to the Patients' Rights Law. This law stipulates the distribution of financial compensation for damages resulting from medical accidents between insurance companies and the National Office for Compensation of Medical Accidents (ONIAM). The affected patient benefits from compensation according to specific conditions, which include the following:

- The absence of medical error or healthcare facility's fault in causing the damage.
- The damage to be compensated is related to a medical accident outside the scope of error or nosocomial infection in the hospital.
- The presence of a causal link between the damage and medical activities, where the damage results from diagnostic, preventive, or therapeutic acts.
- The damage reaching a certain level of severity, determined by considering the functional disability of the patient and the resulting impact on their professional and family life.

The National Office for Compensation of Medical Accidents (ONIAM) aims to compensate victims of serious hospital-acquired infections, medical research accidents, mandatory vaccinations, as well as infections resulting from blood transfusion or its derivatives, such as victims of HIV or Hepatitis C. This is stipulated in Decree 10/251 and Decree 10/252, issued on March 31, 2010, which amend the French Public Health Law. According to these decrees, compensation for damages resulting from blood transfusion contaminated with HIV is assigned to the National Office for Compensation of Medical Accidents (ONIAM) - Office National d'Indemnisation des Accidents Médicaux.

Starting from June 2010, the National Office for Compensation of Medical Accidents became the sole competent and qualified entity to receive claims and requests related to damages resulting from blood transfusion or its derivatives. This is done within the framework of amicable or judicial settlement, where claims for compensation, whether amicable or judicial, are submitted to the office, and not to the French Blood Agency, which is no longer considered the primary entity responsible for compensating such damages.

Regarding Algeria, the compensation system for victims of HIV transmission does not have a specific legal framework. Therefore, compensation is subject to the general rules of civil liability, which require proving fault. Consequently, the responsibility of the state and its obligation to provide compensation based on fault is limited to cases of blood transfusion with HIV, which typically occur in hospitals or affiliated blood transfusion centers.

In this context, the legal relationship established by the state's liability is based on the negligence of the affiliated entity responsible for the blood transfusion. Their negligence lies in failing to ensure the transfer of safe blood, free from diseases and viruses. If a patient becomes infected with HIV during the blood transfusion, it proves the fault of the state-affiliated blood transfusion center. As a result, the state is obligated to compensate for the damage caused, as long as the legal relationship of liability is established .

However, it is almost certain that proving fault alone is not sufficient to establish the state's liability and its obligation to compensate. Additionally, it is necessary to establish the causal link between the contaminated blood and the disease (HIV infection), which can be challenging to prove in practical terms .

Based on this, the Algerian legislator intervened in civil law through an amendment issued in 2005, specifically in Article 140, which may serve as an effective tool that victims can resort to when they are unable to prove the liability of the responsible party. The article states: "If the person responsible for bodily harm is absent, and the victim is unable to hold anyone accountable, the state shall be responsible for compensating for this harm."

Civil liability and the obligation to compensate by the liable party apply to material and moral damages. In the case of HIV patients, material damages include bodily harm as specific and personal damages, as well as financial damages such as loss of income or salary due to inability to work. Therefore, the legislator recognized the state's intervention to compensate for bodily harm, which remains a precautionary measure in the absence of any responsible party. The state takes on the responsibility of compensation based on the concept of social solidarity, which the legislator failed to regulate in many areas, especially regarding the compensation of victims of blood transfusion contaminated with HIV. This oversight could lead to medical, health, and social catastrophes, where it is the duty of the state to intervene and establish a solution. There are victims who find it difficult to apply the general rules within the judicial system. The compensation provided by the state for bodily harm in the absence of liability may lead to paradoxical situations, such as the damages resulting from HIV infection. This necessitates the legislator to determine and assess this compensation based on its severity, the significant changes in the magnitude and extent of the harm from one stage to another, as victims often end up succumbing to death in many cases.

CONCLUSION

The issue of transfusion of blood contaminated with the AIDS virus and the resulting damages has drawn the attention of many countries, as the spread of the disease has extended to numerous regions. This common factor, which disregards regional boundaries, has led to a unified focus on the modern-day disease. However, traditional foundations of civil liability have failed to establish the principle of repairing the harm caused by the transmission of the virus through blood transfusion.

In the face of legal and medical obstacles posed by this reality, countries have sought solutions primarily based on legislative texts that define the rules for caring for the victims of the disease. Initially, such measures were considered mere assistance to the victims, lacking a comprehensive and equitable compensation framework. This is due to the fact that AIDS is a disease where the element of harm is subject to continuous change over time, often culminating in inevitable death. Furthermore, legal proceedings suffer from significant delays in the resolution of disputes, not to mention the heavy financial burden borne by the vulnerable patients. Additionally, the multitude of parties involved, coupled with the disease's association with customs, traditions, and societal stigmatization of the patient, has resulted in the reluctance of affected individuals to pursue compensation claims.

This explains the absence of a court ruling or decision regarding this matter in the Algerian judiciary. It calls for urgent consideration of such cases and the expedited establishment of rules regarding liability.

Similar to other countries in the world, Algeria has witnessed the spread of this deadly disease in the absence of

a specific system for compensating victims of AIDS transmission. Therefore, as an alternative to the general principles of liability, we propose the adoption of the principle of compensation through the establishment of regulatory mechanisms or rules that define the conditions for obtaining redress and the competent authority responsible for it. However, we note the existence of a legal vacuum in this regard, which prompts us to call on the Algerian legislature to address this issue, in the hope that a system regulating the issue of repairing and compensating for the harm caused by the transmission of blood contaminated with diseases, especially HIV/AIDS, will be enacted in Algeria. Therefore, we present the following recommendations:

1. We suggest that a draft law or regulation be formulated to provide protection and rights for AIDS patients, with the aim of ensuring proper healthcare and unifying efforts to combat this modern disease. This should be accompanied by the strict imposition of deterrent penalties on anyone intentionally transmitting the HIV virus.
2. We see the necessity of including legal protection provisions in the regulatory texts or laws that ensure the establishment of the legal right of every injured person to receive adequate compensation from those responsible for their infection, whether it is blood collection and storage centers (blood banks), the healthcare sector, hospitals, or any other person who contributed to the transmission of the AIDS virus.
3. It is also important that the regulatory text includes guidelines for legal liability, especially in cases where there are multiple causes of HIV infection transmission.
4. We propose the imperative need to establish a social fund that is supervised and managed by the state, following the approach adopted by some countries. We suggest that the fund be financed from the state treasury, taking into consideration the amount of compensation based on specific criteria, which are determined by a designated committee, according to the resulting damages suffered by the victims. This should be accompanied by a supplementary system based on the type of subsequent harm, considering that AIDS may persist for several years due to complete immune system failure.
5. In our estimation, compensating the victims of AIDS transmission, especially those resulting from blood transfusion contaminated with the virus, cannot be sufficient except through the principle of national solidarity from the state, to which it should commit primarily rather than as a contingency measure.

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8. Refer to: Nizar Karima, "The extent of the state's commitment to compensating AIDS victims," an article published in the *Legal and Administrative Sciences Journal of the Faculty of Law, University of Djilali Liabes, Sidi Bel Abbès, Algeria*, Issue No. 3 for the year 2007, p. 222.
9. Jamal al-Din Zaki, *Problems of Civil Liability, Part Two: Agreements Related to Liability*, Cairo University Press, Egypt, 1990, p. 236.
10. Hassan Abdul Rahman Qados, *The Right to Compensation: Its Absent Requirements and Contemporary Developments in Situational Systems*, Arab Renaissance Publishing House, Cairo, Egypt, p. 494.

11. Taha Abdul Mawla, Compensation for Bodily Harm in Light of Jurisprudence and Judiciary, Modern Jurisprudence, Legal Books House, Egypt, 2002, pp. 419-423.
 12. Al-Asili, Saad Salim, Insurance within the Scope of Medical Liability in Comparative Law, Dar Al-Fadila for Printing, Cairo, Egypt, 2000, p. 36.
 13. Muhammad Jalal Hassan Al-Atroschi, Civil Liability Arising from Blood Transfusion: A Comparative Study, First Edition, Dar Al-Hamid, Amman, 2008, pp. 165-168.
 14. Muhammad Abdul Zaher Hussein, Problems of Civil Liability in the Field of Blood Transfusion Operations, Arab Renaissance Publishing House, Cairo, Egypt, 1995, p. 163.
 15. Muhammad Fouad Abdel Basit, Reconsideration of the Concept of Fault as the Basis for Medical Facility Liability, Ma'aref Establishment, Alexandria, Egypt, 2003, p. 170.
 16. Direct action is the method for claiming under both optional and compulsory liability insurance contracts. The injured party, who is outside the contractual relationship, is linked to the insurer by a relationship governed by the principles of tort liability. The insurer, in turn, is linked to the insured by a contractual relationship governed by the principles of contractual liability. The legislator grants the injured party the right to bring a direct action so that they can directly claim compensation from the insurer for the damage they have suffered.
- Refer to: Abdul Razzaq Ahmed al-Sanhouri, Explanation of the New Civil Law, Contracts of Deception, Insurance Contracts, Volume Seven, Arab Renaissance Publishing House, Cairo, Egypt, p. 167.
17. It is considered a private administrative institution overseen by the French Ministry of Health, established under the Law of March 4, 2002, concerning patient rights. It provides a system for compensating medical injuries to meet the demands of victims who do not have the right to compensation through the liability system due to the absence of the fault element. Therefore, it operates as a fund acting on behalf of national solidarity, with its main task being to compensate victims of medical accidents or their heirs in case of death. It replaces the insurance company if the victim fails to obtain compensation from it.
 18. The French Car Accident Guarantee Fund under Law No. 07 June 1977, and the Guarantee Fund related to the fight against terrorism under Law No. 09 September 1986, which has been amended several times.
 19. Refer to Article 1142/2 of the French Public Health Law amended by Law No. 04 of March 2002 concerning patient rights.
 20. Victims of AIDS in 1991 filed lawsuits against blood transfusion centers and the state. The Paris Administrative Court received about 400 appeals from hemophilia patients infected with the AIDS virus, and the state was held responsible on various grounds, by judgments issued on December 20, 1991.
 21. Refers to: Law of December 31, 1991, published in the Official Journal on January 4, 1992, page 178.
 22. Refers to: Law No. 2002-1577 of December 30, 2002, relating to medical civil liability, published in the Official Journal on December 31, 2002, text: 3, page 22100.
 23. There are 3 famous judicial rulings in this field:
 1. Judgment: 1991. P 167A.J.D.A(GOMEZ) (December 21, 1990)
 2. Judgment: 1993. P 127RecCE(BIANCHI) (April 9, 1993)
 3. Judgment: Pavan No. 151798 Nguyen, No. 143238 Jouan No. 143673 | CE, ass, May 26, 1995, Lebon collection, CE P 221 and 222.
 24. VINEY (G), observation: Cassation: 2nd civil chamber, June 18, 1997, JCP 97, I, 4070, No. 37.
 25. Official Journal No. 0060 of March 12, 2010, text No. 23, page 4871.
 26. Refers to: Lambert, Faivre, Problems of Blood Transfusion Liability, Section IV, Dalloz, 1996, page 14.
 27. Refers to: Marie-Dominique Flouzat-Auba, Sami-Paultawil, Rights of Patients and Liability of Doctors: A User's Manual, Marabout, Italy, 2005, page 112.

28. ROMANI (Anne-Marie), Compensation for Medical Accidents in the Reserved Domain of the Result Security Obligation, Article in the Petit Affiches, No. 106, May 29, 2001, page 8.