

THE EXERCISE OF PUBLIC HEALTH AUTHORITY IN NEW-CALEDONIA

Politics in the age of uncertainty

Panel 7 - Cross-Political Perspectives on Response and Impact of the COVID-19 in the South Pacific

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By way of introduction, it should be recalled that New-Caledonia is the French public territory with the greatest autonomy in the French Constitution. It's within this legal and political framework that New-Caledonia has had to manage the COVID-19 health crisis. But the exercise of its authority in the health sector is linked to the authority of the French State. This creates a certain level of complexity.

1. THE HEALTH SITUATION OF COVID-19 IN NEW-CALEDONIA

New-Caledonia has long been spared from COVID-19 thanks to strict re-entry and quarantine measures. But, on 6th of September 2021, New-Caledonians learned that the delta variant had finally reached the territory. To understand this situation, it's necessary to retrace the stages of the crisis.

As in the rest of the world, the first cases rapidly appeared, in March 2020. It was thanks to the immediate closure of air and sea borders, a general lockdown of the population for a month, and quarantine measures that the circulation of the virus was prevented. This situation lasted for a year. But, to ensure territorial continuity between Wallis and Futuna, another french COVID-free territory, and New-Caledonia, air links were maintained, without quarantine obligations. The arrival of the virus in Wallis therefore rapidly spread to New-Caledonia in

March 2021. But again, the territory managed to avoid the spread of the virus thanks to a three-week lockdown. New-Caledonia became COVID-free again. Unfortunately, as expected, the virus finally managed to cross the health barrier. At the beginning of September 2021, the delta variant entered the country and circulated very quickly in the population, rapidly causing the first deaths. Today, 3 603 people are infected, 39 people are in intensive care in hospital, and 25 people have already died. Currently, New-Caledonian people are under a month lockdown since the 7th September 2021.

The crisis could have significant human consequences in New Caledonia, for several reasons:

- 1 - A large percentage of the population is affected by underlying medical conditions (diabetes, obesity). These diseases can lead to serious forms of COVID-19.
- 2 - The health care system, even if it's developed, remains limited. There are few hospital beds in intensive care, only about fifty. That's the reason why the influx of patients has already saturated the health system.
- 3 - The financing of the New-Caledonian health system has major difficulties.

The measures to combat the epidemic are therefore very restrictive, in order to preserve public health. Their adoption results from the joint implementation of the powers of the French State and the powers of New Caledonia's institutions.

2. DISTRIBUTION OF POWERS BETWEEN NEW-CALEDONIA'S INSTITUTIONS AND THE FRENCH STATE

Implementing the Nouméa Accord, the Organic Law of 19th of March 1999 lists the sectors definitively transferred to New Caledonia by the French State. According to article 22, New-Caledonia is responsible for the area of health, hygiene and sanitary control at borders. This authority goes back a long way. It was transferred to the territory a long time ago, well before the current status. Health has been under New-Caledonia's jurisdiction since 1957.

So, we could think that the management of the health crisis would be done exclusively by the regulations adopted by the institutions of New-Caledonia. In fact, there is legislation enacted in

2008 by the Congress of New-Caledonia which allows measures to be taken to combat serious health threats.

However, the French State also retains several powers. It can adopt and enforce laws and regulations in New-Caledonia. According article 21 of Organic Law of 19th March 1999, this is the case for ensuring "*the guarantees of public freedoms*". This power of the French State was used to apply in New Caledonia the national rules of the health state of emergency created by the law of 23rd March 2020.

There is a conflict of jurisdiction. It had to be determined whether the lockdown, quarantine or restriction of movement measures should be taken by the French State or by New Caledonia's institutions. In a decision of 4th December 2020, the French Constitutional Court ruled that the French State was in its right to apply in New Caledonia the state of health emergency in the name of "*guarantees of public freedoms*", even if the measures taken were for health purposes.

This legislation gives significant powers to the French High Commissioner in New Caledonia. He can greatly limit the fundamental freedoms of citizens. But New Caledonia is not completely deprived of its health authority. It can still adopt its own health regulations. Two policies illustrate this complex distribution of powers.

3. QUARANTINE ON ENTRY TO THE NEW-CALDONIAN TERRITORY

If New Caledonia managed to remain COVID-free for a year and a half, it was thanks to the implementation of quarantine measures upon arrival in the territory. Not only do people wishing to come to New Caledonia have to justify a "compelling reason" (e.g. professional), but they also have to undergo isolation in hotels specially designated for this purpose.

This measure is taken by the High Commissioner because it infringes on people's individual freedom and their freedom to come and go. But it's New Caledonia that decides on the health protocol and especially on the duration of the quarantine. The quarantine was 14 days for unvaccinated people and 7 days for vaccinated people. Now the rules have changed, with the compulsory vaccination. I will explain to you in my last section.

Since the beginning of 14th September 2021 and the active circulation of the virus in the territory, people entering the country are authorised to quarantine and self-isolate at home. Hotels are now used to accommodate COVID-19 patients who do not need to go to hospital, so as not to saturate it.

In addition to these quarantine measures, New-Caledonia has developed an active vaccination policy. It shows once again the articulation of the powers of the French State and New-Caledonia.

4. MANDATORY VACCINATION AGAINST COVID-19 IN NEW-CALEDONIA

Vaccination policy has long been the responsibility of New Caledonia as part of its health jurisdiction. The rules adopted by the French State do not apply to the territory of New Caledonia. However, the French State has decided to help New Caledonia by providing the necessary doses of vaccine. And Government and Congress of New-Caledonia choose the vaccination strategy. At the beginning, the vaccination policy was incentive-based. Despite a dynamic vaccination campaign and sufficient doses, only a small part of the population was vaccinated. Thus 26% of New Caledonians were vaccinated before the virus spread throughout the territory.

This explains why New Caledonia has gone further than French State in terms of vaccination.

- In mainland France and in the other overseas territories (except New-Caledonia and French-Polynesia), the law of 5th of August 2021 imposes compulsory vaccination on several professions, mainly in the health sector.
- In New Caledonia, following a decision of the Congress on 3rd of September 2021, vaccination is compulsory for all inhabitants of the territory, except children under 18 and with a medical reason not to be vaccinated.

Nevertheless, the text allows for a delay in compliance. Two situations must be distinguished:

- 1 - For the general population, the text allows until 31 of December 2021

2 - For certain categories of people, the text only allows until 31 October 2021: There are two categories :

- a/ Certain people with a disease that shows an underlying medical condition (e.g. diabetes, obesity, etc.)
- b/ Certain workers : e.g. air and maritime transport sector ; hotels of quarantine medical sector ; sensitive sectors (e.g. army, police, bank, or media)

For those workers, employers will be obliged to verify compliance with these vaccination requirements by requesting a vaccination certificate. In the event of failure to vaccinate by these deadlines, a fine of 175,000 francs (2300 AUS dollars) may be imposed on those people. That the same fine for unvaccinated people with underlying medical condition.

Obviously, this policy of compulsory vaccination has not been accepted by everyone. One Caledonian resident challenged it by appealing to the New-Caledonia Administrative Court. This person felt that this obligation infringed on various fundamental freedoms. But, in a decision of the 14th September 2021, the administrative judge implicitly validated this vaccination obligation. He said the introduction of the Delta variant of COVID-19 implies "*the enactment of measures that contribute to reducing the circulation of the virus and to protecting the health of the population, at the forefront of which is vaccination*".

At the same time, the French state has modified the state of health emergency regulation. Since 20th of September 2021, travellers entering New-Caledonia, including French people, must be fully vaccinated, except children under 12 years and people with a medical reason not to be vaccinated. So, all travellers arriving in the territory must therefore self-isolation quarantine at home for 7 days.

In conclusion, New Caledonia's institutions must manage the health crisis within the legal framework largely defined by the French state. The state of health emergency has partially deprived New-Caledonia of its authority in the health sector. However, this power is not reduced to nothing. New-Caledonia can still act autonomously, as shown by compulsory vaccination for inhabitants. Politically, it will therefore be up to the institutions of New-Caledonia to make new trade-offs between freedom and public health.