Chapter 2

WHAT IS MEANT BY THE RIGHT TO HEALTH?

2.1. HEALTH AS A HUMAN RIGHT

The right to health should not be seen as a right to be healthy. The state cannot be expected to provide people with protection against every possible cause of ill health or disability such as the adverse consequences of genetic diseases, individual susceptibility and the exercise of free will by individuals who voluntarily take unnecessary risks, including the adoption of unhealthy lifestyles. Nor should the right to health be seen as a limitless right to receive medical care for any and every illness or disability that may be contracted. Instead, the right to health should be understood as a right to the enjoyment of a variety of facilities and conditions which the state is responsible for providing as being necessary for the attainment and maintenance of good health.

It is helpful to view the right to health as having two basic components: a right to health care and a right to healthy conditions. It is not easy to compile a comprehensive list of the necessary conditions as their relevance will depend on a number of variable social and economic factors, such as the extent of avoidable and unavoidable exposure to health hazards in different situations. However, as will be seen later, decisions have recently been taken, and advice has been issued, by UN treaty monitoring committees as to what the right to health means in practical terms. This process of clarification is likely to continue with the result that the scope of the right to health will become still clearer in the future, for example through the development of regional and national case law.

The World Health Organization (WHO) articulated the first specific international health and human rights provisions in the preamble to its Constitution (written in 1946). It declares that:
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‘the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic, or social condition.’

WHO Constitution Preamble

The phrase the right to the highest attainable standard of health, which is commonly referred to by the short-hand term the right to health, has since been endorsed by a wide array of international and regional human rights instruments. Soon after the WHO Constitution was formulated, the right to health was affirmed by the Universal Declaration of Human Rights (UDHR) which states that:

‘Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’

UDHR art 25(1)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was the first human rights treaty to require states to recognize and realize progressively the right to health, and it provides key provisions for the protection of the right to health in international law:

‘1. The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States parties . . . to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the still birth rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical services and medical attention in the event of sickness.’

ICESCR art 12