Communicable Diseases and Human Rights

JOSEPH DUTE*

1. Introduction

Despite higher standards of living, better nutrition, sanitary improvements, the development of drugs and vaccines and a profound scientific understanding of the ways they spread, communicable diseases are still leading killers. In 2001, communicable diseases caused no less than 14.7 million deaths, being 26% of total global mortality. Three diseases – HIV/AIDS, Malaria and Tuberculosis – count for 39% of deaths as a result of communicable diseases (i.e. 5.6 million deaths). But not only the mortality rate should be taken into account, just as important are the morbidity figures: almost 1 billion people suffer from severe and permanent disabilities and deformities caused by communicable diseases. Communicable diseases are not just horrors of the past, but equally of the present, and old and new diseases will sweep us in the future. We will never be free from them, but measures can be taken to detect outbreaks at the earliest moment possible and to contain epidemics as much as possible. This requires effective surveillance systems, timely application of control measures and increased (public health and other) resources to be mobilized. And here human rights come into play.

2. Communicable Diseases and Human Rights

The fight against communicable diseases affects human rights, both social and individual human rights, in a profound way. Poverty and communicable diseases go hand in hand. Poverty leads to bad nutritional and sanitary circumstances, unawareness, lack of adequate health care resources, political instability, conflicts, population displacement, and so on, thus creating excellent conditions for the spread of communicable diseases. Conversely, communicable diseases lead to severe economic losses, societal disruption, instability and poverty. Poverty reduction should therefore be at the heart of the fight against communicable diseases.
Thus it becomes clear that not only the right to health care, but also a great number of other social human rights are at stake, such as the right to education, the right to work, the right to social security, and so on.

The Aids-epidemic has shown that the exercise of compulsory public health powers involves a potentially massive infringement of individual human rights, notably individual liberty, physical integrity and privacy. In fact this has always been the case when new and poorly understood epidemic diseases threatened mankind. Vital interests of society are at stake then and the call for draconian measures, be they effective or not, is the result.

Recent threats like SARS and the possibility of a bioterrorist attack with the smallpox virus add some alarming dimensions to the human rights issue in the fight against communicable diseases. In many countries SARS has led to the re-introduction of old and nearly forgotten control measures like quarantine, not only of individuals but also of groups of people, isolation at home and the supervision of contacts of probable or suspect cases. For a contact to be placed under supervision, broad criteria are set by the Health Departments: persons who lived with or cared for a probable or suspect case, persons who stayed within a radius of two meter of the probable case, persons who came into contact with body fluids of the probable or suspect case, persons who stayed within the same room as the suspected case. All in all, there is a revival of the so-called barrier-approach, a way of combatting communicable diseases that lead to severe restrictions of freedoms and autonomy, but unfortunately time and again has proven to be unsuccessful.

On 8 March 1980, the World Health Organization (WHO) declared the world free of smallpox. However, stocks of the virus are held in two laboratories. Now, following the use of anthrax for terrorist reasons in the USA, there is fear for the use of smallpox as a biological weapon. Although this is an event with only very low probability, the danger should not be underestimated, because the occurrence of even a single case of smallpox anywhere in the world would amount to an international public health emergency. At first sight, there is nothing new under the sun. Throughout the ages microbes have been used as a biological weapon and epidemics were often decisive for victory or defeat on the battlefield. However, the fact that a vaccine against smallpox is available and that adequate control measures can be put in place raises the normative question as to the extent to which scarce resources should be made available in order to be prepared for an event with low probability yet potentially catastrophic consequences. Is it justified to give priority to this unknown but probably very low risk, given the fact that each year more than 14 million people die from well-known diseases that most of the time can easily be prevented and cured?