



*executive committee of
the directing council*

PAN AMERICAN
HEALTH
ORGANIZATION

*working party of
the regional committee*

WORLD
HEALTH
ORGANIZATION



59th Meeting
Washington, D. C.
July-August 1968

Provisional Agenda Item 13

CE59/16 (Eng.)
16 July 1968
ORIGINAL: SPANISH

RELATIONS OF HEALTH TO LAW

The XVII Directing Council instructed the Director of the Pan American Sanitary Bureau "to submit to the 59th Meeting of the Executive Committee a preliminary report on the relations between health activities and law, outlining a plan for collaboration with the Governments that request it." In order to implement these instructions, the Director convened a group of experts which met at Headquarters from 22 to 26 April 1968. They examined the problem along the general lines laid down by the Director in delimiting the subject in order to determine suitable procedures for making professional health workers and lawyers aware of the problem and for facilitating the work of the Ministries of Health for Latin American integration, especially the health aspects of the future Latin American Common Market.

Two outstanding features of the problem of the relations of health to law are: on the one hand, the extent and intimacy of these relations, which are national, regional, and international in extent and which cover such varied issues as food, water supply, pharmaceutical products, industrial hygiene, and the like; on the other hand, the lack of interest shown by professional health workers and lawyers in their mutual relations.

However, despite this situation, the volume and importance of health legislation is steadily growing, a development which must not be regarded as a chance or transitory phenomenon, but as a trend which will become more pronounced in the future. There is, for example, the "International Digest of Health Legislation" which has been published by the World Health Organization since 1948; there are the relations that the Organization maintains with the International Law Association, the International Committee for the Neutrality of Medicine, the International Law Institute, the International Committee of the Red Cross, the World Medical Association and the International Committee of Military Medicine and Pharmacy, which have concerned themselves with the legal aspects of health problems.

Since the Second World War there has been a growing trend to incorporate the right to health into national constitutions. It is also mentioned in certain international instruments such as the American Declaration of Human Rights, the Universal Declaration of Human Rights, and the International Pact on Economic, Social and Cultural Rights.

The preamble to the Constitution of the World Health Organization states:

"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."

In the final analysis, the assistance rendered by the World Health Organization and the Pan American Health Organization to Governments is intended to make that right a reality. The relations between health and law should be examined in the light of the fundamental purposes of promoting and coordinating the efforts of the countries of the Western Hemisphere to "combat disease, lengthen life and promote the physical and mental health of the people." This approach to the problem places emphasis on its educational, public administration and international cooperation aspects.

As far as education is concerned, it is desirable that from the primary school onwards, pupils be made aware, through the appropriate educational procedure, of the right to health as an individual and social right.

Medical and other professional schools should give students special training in health law either by teaching it as a separate subject or in some other appropriate form. This would facilitate the relations between private practitioners and officials, both physicians and laymen, especially those responsible for the provision and administration of medical care services. There is no doubt that a suitable legal structure and appropriate legislation can reduce the areas of friction between the above-mentioned professions to a minimum. This question is of special interest in Latin America where most health services are provided by the state or other public bodies.

In the field of public administration, the relations between health and law are obvious. Public administration is the result of an institutional political structure based on a given legal system, and its application is the consequence of a legislation which facilitates and activates public activities and extends them to any place under its jurisdiction, at the required time and by such ways and means as are required by the situation calling for public action. For the last few years the Bureau has been devoting increasing attention to the re-organization of national health administrations. Since 1960, seminars dealing with administrative problems have been held each year. The Bureau has collaborated with the United Nations in this field, and in the Provisional Program for 1969, provision is made for 20 administrative methods officers to service the requests of Governments.

As for international cooperation, the international health responsibilities of states and the health aspects of economic integration are of direct interest.

Indeed, because of the rapidity of international transportation and the possibility of rapidly applying new techniques and methods a study should be made of international assistance in the event of a country suffering damage as the result of an act or event originating outside its national frontiers.

Generally speaking, the spread of an epidemic originating in another country for example is regarded as a case of force majeure or an accident for which the state has no legal responsibility. When a public calamity due to an unwilling event occurs, the solidarity of the American nations has been manifest in the past and will continue to be manifest in the future.

It might also be advisable to study the possibility of obligatory assistance in the event of proof being offered of the external origin of the situation to be corrected, in order to reduce the financial burden it represents for the country concerned. The Organization, which is responsible for coordinating health efforts in the Americas, could help to promote such studies.

In the next few years the economic integration of Latin America will be moving forward, and it will undoubtedly need an institutional structure to regulate it. The Presidents of America decided to establish progressively, beginning in 1970, a Latin American Common Market, which should be substantially in operation within the period of not more than 15 years.

Integration presupposes the enactment of community legislation and the harmonization of national laws governing subjects of common interest. The Declaration of the Presidents provided for the harmonization of the necessary basic legislation for economic integration as well as for the harmonization of national laws to the extent required for integration. This also applies to health activities.

In addition, suitable health legislation is essential for the success of general development plans for the integration of border areas and the joint development of regional resources, for example, the Jungle Marginal Highway and the Program for the Development of the River Plate Basin; and, it will be necessary to establish joint institutions or agencies to formulate such legislation. The Pan American Health Organization will have an important role to play in the promotion and formulation of health law for regional integration, through its technical advisory services to Governments.

Finally, the Pan American Sanitary Code signed in Havana on 14 November 1924 and supplemented by the additional Protocol of October 1927 and the Additional Protocol of 24 September 1952 poses a particular problem. From these dates it is clear that the provisions of the Code have been superseded, for example, those relating to compulsory notifiable diseases by the International Sanitary Regulations. The Code could not foresee the economic and social development which was initiated at Bogota in 1958 and received particular impetus at Punta del Este in 1961 and in the Declaration of the Presidents of the Americas in 1967.

In short, the Pan American Sanitary Code is no longer attuned to the health situation in the Western Hemisphere. Nevertheless, it is still the fundamental instrument governing the functions and obligations of the Pan American Sanitary Bureau and it prescribes the system for the financing of the Pan American Sanitary Bureau.

Therefore, it might be advisable to study a new international instrument for the Western Hemisphere which would take into account the above-mentioned circumstances and whose provisions would be consistent with those of the Constitution of the World Health Organization and the Pan American Health Organization, in order to achieve the maximum possible consistency in these international instruments.

In addition, a new international instrument would enable the new American states which are members of our Organization and were not among the 21 American Republics which signed and ratified the Pan American Sanitary Code to adhere to it. In the same way, the drafters of the new instrument would have to take into consideration the so-called Buenos Aires Protocol of 27 February 1967, which amends the Charter of the Organization of American States and is in the process of being ratified.

However, we should be aware of the difficulties involved in the preparation of such an international instrument and the obstacles which may arise as far as the ratification is concerned because of the different constitutional procedures existing in the Americas.

To sum up, the study of the relations between health and law, in particular some of their specific aspects such as the dissemination of health legislation, its harmonization and codification, the international health responsibilities of states and the health legislation aspects of economic integration and the Latin American Common Market, the incorporation of health law into the curriculum of medical and law schools, the integration of the right to health into civic education in primary and secondary schools deserves the attention of the Pan American Health Organization which may wish to provide the Governments of the Organization that request it with advisory services in this field.

A practical way of speeding up this activity, in which we are taking the first steps, would be to convene a meeting of persons, who, by reason of their training or the posts they occupy, are directly concerned with health and legal activities, both national and international. This group would be responsible for preparing an action program for the Organization which would be submitted to the XX Meeting of the Directing Council or the XVIII Pan American Sanitary Conference, which will be held in 1970.

Finally, the Director would like to know the opinion of the Executive Committee on the advisability of preparing a new international instrument to replace the present Pan American Sanitary Code. If the Executive Committee is of the opinion that such an instrument should be prepared, it might be

advisable to convene a group of international experts to draw up a preliminary draft to be submitted to the Executive Committee for examination in 1969.

Thus the Director of the Bureau has complied with the instructions he received from the XVII Directing Council and wishes to receive from the Executive Committee such recommendations as it deems pertinent. These will be submitted to the XVIII Meeting of the Directing Council in accordance with operative paragraph 2 of Resolution XXIII of the XVII Meeting of the Directing Council.