The right to health, what does that mean?

Why this question?

The human right to health is a social right embracing complex ethical, economic and legal issues, which tend to question its justiciability. Few researchers have however attempted to explore its legal content. It is therefore fundamental that academics clarify what the right to health means, in order to assist the main actors involved in its implementation. Such actors are: judges and human rights bodies, in litigations; individuals and NGOs representing their interests, when facing a violation; and, of course, states, in their efforts to comply.

Individuals, NGOs

States

Judges, human rights bodies

Clearer definition = better implementation

Academics

Findings

Scope:
The UN Covenant declares that all human beings have a right to health and the UN Committee interprets this provision accordingly in its monitoring procedures. The European Social Charter, on the contrary, only protects the right to health of European nationals. The European Committee has attempted to widen this scope in its complaints procedure but it remains restricted to what the European Social Charter provides for.

Normative content:
Systematically evaluating the realisation of the right to health against indicators on curative, promotional, and preventive health, enables the European Committee to secure a substantial definition of this right. The coherence of this interpretation strengthens its normative aspect.

The UN Committee does not use any indicators, it reviews states’ implementation of the right to health on a case-by-case basis. Whilst this interpretation fails to provide a coherent definition of this right, it deals more boldly with mental, sexual, and illegal migrants’ health.

Progressive realisation:
The European Social Charter does not recognise explicitly the concept of progressive realisation. When it reviews the implementation of the right to health, the European Committee nonetheless expects states’ performance to improve, and its indicators allow for a successful follow-up in this concern.

The UN Covenant recognises states’ obligation to progressively realise the right to health more explicitly. The UN Committee also expects states to progress in the field of healthcare, but the absence of indicators in its monitoring procedures impedes its attempts to follow up on such issues.

Minimum core obligations:
The European Social Charter does not recognise the concept of non-derogable obligations but the European Committee seems to have adopted this approach in its reporting procedure. This is however restricted to instances where states fail to prevent particularly high maternal and infant mortality.

The UN Covenant does not recognise this concept either but the UN Committee recently issued general guidelines endorsing this approach. By refusing to hold states in violation of the right to health in its monitoring procedures, the UN Committee yet fails to fully embrace this approach and subsequently, to protect minimum levels of health.

Conclusion

Whilst the right to health must be interpreted in the light of accepted principles of human rights law, it must also be construed in practical terms. Its scope should therefore not be restrictive as to breach the principle of non-discrimination, and its normative content should be coherent. Finally, the right to health should be understood as requiring states to progressively strive for the best standard of health attainable while respecting non-derogable minimum standards of health.

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