LAWS ON ENVIRONMENT AND SOCIAL SECURITY

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I. Social security may be understood as a unifying element, through which a coordination of multiple policies, adapted to varying cases and circumstances, can be effected. An outstanding items in the field of social security is the alteration of health.

In the Beveridge Report, the social security system is viewed as a component of an ampler aggregate in which policies for full employment and policies for better health, are included.

In any policy aiming at social security there must be a coexistence of diverse types of measures providing for assistance, prevention, and social insurance.

Instruments of social security have been conceived, from this point of view, as preventive, reparative, and recuperative mechanisms.

Health alteration is one of the life contingencies that lends itself to measures of protection, since its occurence is the cause of extraordinary expenses to meet the cost of medical attention. Such an alteration is, on the whole, undesirable as it produces excess disbursements and/or a decrease in income. These effects appear in the same form if the alteration of health affects the head of the family or its members. There may be a complete of income and also an insufficiency of funds. The extra expenses may be so heavy that even a low level of family income becomes unattainable.

Protective measures against alterations of health induced by environmental contamination, have undergone a process of evolution. They started as provisions to protect individual needs, whereas nowadays they consider the protection of collective needs.

Sanitary prevention, for instance, can only be accomplished by means of regulations directed at social groups such as composite entities.

This explains why our legal system has been compelled to utilize new juridical devices and to depart from tradition. The outdated idea of simple

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economic relief, has been complemented with the implementation of the so called "social services". These social services aim to remedy individual and collective needs simultaneously. The idea will be later explored in more detail.

Modern conceptions of social security as a protective instrument imply two underlying principles of special importance: 1) The principle of universality; and 2) The principle of generality.

In accordance with the principle of universality, any of the members of a given community deserves an equal degree of protection. That is, social security must be projected towards all individuals contitutiting the national population.

The principle of generality demands that social security take care of the prevention of risks and not be limited to the economic compensation of damages. It also implies that social security should not only cover individual needs economically relievable, but also attend to the prevention of those needs which can only be avoided acting through the community in general.

It is our contention that protection of health should adjust itself to the above defined principles. If we take this protection as a goal for social security policies, we shall find that the attainment of such an objective requires the use of preventive, reparative, and recuperative mechanisms.

A first set of this kind of mechanisms consists of a body of provisions aimed at the prevention of risks which may mean physical or pecuniary damages for the individuals. Such a general conception allows the inclusion of various dispositions of sanity policy, aimed to prevent exposure to such risks.

The legal and phylosophical justification of this mechanisms is well known: if health is a community asset, its preservation becomes mandatory for the state.

The state must guarantee the health of the community by the implementation of legal and physical instruments that ensure its enjoyment. In other words, if social security is construed as a policy of the state, the state must be legally able to attain public health as an objective. This, in turn, means the possibility of establishing and actuating adequate means for that purpose.

Social security, then, becomes a wide set of laws that organizes a system of guarantees for the basic human rights, among which one must consider in a very first place, the right of enjoying a healthy life.

Alteration of health is nowadays becoming an evident concern in the mind of the legislators working on environmental law.

Rules and regulations on sanitary matters become in the light of the

basical principles of social security, indispensable instruments of any policy-seeking for the preservation of health.

Damages to health that may be brought upon as a result of professional or ordinary hazards, must be considered as socially undesirable. They may cause a total incapacity of learning income and also turn the existing income inadequate to cover the excess of expenditures required to regain a healthful condition.

From this point of view, to classify risks or hazards becomes unimportant. The outstanding question is that any alteration of health causes undesirable needs that can be prevented.

If one accepts that one of the ends of social security is to guarantee the human right to enjoy good health, it is foregone conclusion that the state must organize and implement the effectiveness of such a guarantee, through proper legal instruments.

Legislation should, then, include all provisions conductive to the effectiveness of this guarantee, and among these provisions, sets of dispositions regarding the prevention and control of environmental contamination as a menace to health are indispensable.

Human activities, capable of changing the ecological systems of which man is a part, should be subject to special regulations directed to impede environmental deterioration that is threathening human life and welfare.

In the absence of regulations of this nature, the human right of good health enjoyment cannot be duly guaranteed and consequently, the presiding objective of social security would be unattainable.

II. Mexico has a law, the *Ley Federal para Prevenir y Controlar la Contaminación Ambiental* in force since March 23, 1971, date of its publication in the government official daily newspaper.

As far back as 1940, Mexican legislators had approved several dispositions regulating industrial and commercial concerns and their ways of operation, in an effort to protect the surrounding population against their troublesome, unsanitary or dangerous effects. Several contaminants were considered in such regulations but only with the prevailing idea of the immediate damage to individual welfare. Ecological damages were simply not taken into account, with the exception represented by an attempt to regulate noise.

This early regulation of noises constitutes a precedent to the dispositions of the aboverementioned *Ley Federal para Prevenir y Controlar la Contaminación Ambiental*, that considers noise as a main environmental contaminant.

The year 1952 withnessed the enforcement of a set of dispositions on noises, aimed to control any kind of sounds that might affect the health and peace of people.

The dispositions of the Mexican law of March 23, 1971 are considered as provisions for general public health. Their implementation and enforcement is of the competence of the executive power of the state, acting through the Secretaría de Salubridad y Asistencia and the Consejo de Salubridad General. This late government entity is directly under the control of the President and has power to formulate general sanitary measures, enforceable in all national territory.

A presidential decree, dated January 29, 1972, originated a new governmental office: the Subsecretaría de Mejoramiento del Ambiente. The creation of this new government department is well justified in view of the amplitude and diversity of functions attributed to the Secretaría de Salubridad by the new anticontamination law we are discussing.

Contamination, in terms of this law, is understood and defined as "the presence in the environment of one or more contaminants or any combination of them that may adversely affect human life, health, and welfare"...

This definition clearly situates the new law as an instrument of prevention, as far as public health is concerned.

The President and the federal executive power will dictate the regulations required to enforce and bring into effect the measures, processes and technological procedures required to prevent, control, and abate environmental contamination.

Provisions of this law are focused upon three main contamination problems: air and water pollution, and soil contamination. The corresponding legal chapters consider the damage to human health as the basic issue.

Article 10 prohibits the discharge of any kind of contaminants that may alter the atmosphere and cause injury to human life and health, if it is not effected subject to the rules of the law.

Article 14 forbids the feeding of residual waters carrying contaminants, radioactive materials, and any kind of substance whatsoever that may be harmful to human health into sewer systems, rivers, channels, water reservoirs or deposits of any kind.

The *Reglamento para la Prevención y Control de la Contaminación Atmosférica Originada por la Emisión de Humos y Polvos*, a set of by laws in force since September 17, 1971, contains in its opening considerations a general declaration that emphazises the grave threat to public health represented by air and environment pollution.

Foreign legislation evidences similar tendencies. North America's "Clean Air Act" of December 17, 1963 defines atmospheric contamination as the evacuation into the air of contaminating elements that may cause damage or inconvenience to the population, threathening their health, welfare or

personal security"... That is, the presence of smoke, charred paper, coal dust, acids, vapours or gasses is only considered a contaminant if it constitutes a menace to the health and security of persons or determines injuries to their personal activities or property.

Damage to health is also basic to define contamination in the Belgian Law of December 28, 1964.

Mexican dispositions for prevention and control of environmental contamination aim to guarantee a human right to good health. The configuration of a guarantee of this sort, that is the basic idea of the human right involved is definitive of social security.

Article 2 of the *Ley del Seguro Social,* in effect since March 12, 1973, explicitly states that "social security purports, as one of its aims, the guarantee of human rights to good health, proper medical assistance, protection of means of subsistence, and public performance of such social services as may be necessary to individual and collective welfare".

Actualization of this guarantee supposes a control of environmental contamination, considered as a detrimental factor, capable of endangering good health.

Mexico's *Ley del Seguro Social,* contains several rules relating to the coordination of activities of the Instituto Mexicano del Seguro Social, with those of the Secretaría de Salubridad y Asistencia and other related governmental offices, in the formulation of plans, and public campaigns, orientated towards the prevention of sickness and the protection of health.

As additional dispositions for the protection of health, the *Ley Federal para Prevenir y Controlar la Contaminación Ambiental* and the *Reglamento de Prevención y Control de la Contaminación Atmosférica Originada por la Emisión de Humos y Polvos,* contain provisions for the formulation of public educational and guidance programs to divulgate information on the problem of contamination. Such programs should also impart instruction on the adequate practical means to prevent, control, and abate contamination.

Mexican legislation gives the Executive authority to make the people contamination conscious. As a means to this end, the study of Ecology and its problems has legally become compulsory in certains grades of public education curriculae.

Mexican laws on prevention and control of contamination do not contemplate, however, the cooperation of the Instituto Mexicano del Seguro Social to put into practice the abovementioned educational and guidance compaigns. This is an unfortunate omission, since Article 119 of the *Ley del Seguro Social,* imposes as an obligation of said institute, the carrying into effect of divulgation journeys on preservation of health, and sanitary

campaigns and other special programs of action aimed at the solution of *médico-social* problems.

The *Ley del Seguro Social* of the year 1973 established "social services for community benefit". According to Article 232 of this law, social services may consist of those social benefits that are directed to the promotion of health and to the prevention of sickness and accidents.

To this effect, health should be promoted through difussion of pertinent and useful knowledge. Divulgation of said knowledge may be obtained by means of direct courses or through massive communication media.

This legal structure clearly reveals a strong emphasis on promoting good health by preventive measures, aided as mentioned before, by the body of legal dispositions devised to fight contamination and its harmful consequences on public halth.

One can detect a very important evolution in this field. To emphazise prevention is to abandon the previous conception of simple reparation. Let us analyze this question further.

Ordinary social insurance means only a direct or indirect economical compensation. It may be a payment in money or a payment in kind. In any case, such a payment is demandable only by its relation to a predetermined risk or situation.

Seen in this manner, insurance benefits are limitative. This insurance contains no possibility of prevention and precludes protection to collective needs.

On the other hand, a true notion of social security implies a preventive position rather than a reparative one. Recent Mexican laws on environment problems are a patent proof of the conceptual transformation undergone.

If laws on social security are understood as a special juridical branch, the new laws on environmental contamination represent a satisfactory evolution of the basic ideas on health protection.