

## Inferring on the Right to Health in the New World Order

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### Abstract

*The main problems we find in the field of health, encounter also in Romania in a fairly large proportion, are those related to discrimination, abuse and violation of fundamental rights. We can say that human rights have become the obligatory reference of any modern discourse, but are sometimes treated as a simple "fashionable" element. This can be seen even when we talk about the right to health. We say this because, although the number of countries that include in their constitution the right to health and draft the national legislation necessary to comply with is constantly growing, when it comes to interactions with medical institutions and health care providers, the patients' rights are not fully respected. All these are the reasons why we decided to look deeper in the issue of the right to health, which, by its nature, requires a multidisciplinary approach, because in its content we find both educational activities and those aimed at promoting lifestyle changes, respectively encouraging policies and legislative measures to improve the quality of life.*

**Key words:** justice, equity, discrimination, abuse, legislation

**J.E.L. classification:** K40

### 1. Introduction

The issue of the rights of people using health services has been increasingly debated in recent years, reaching a consensus with great difficulty. This is mainly due to the fact that the field is strongly influenced by the way the health system of a state is organized and by its quality, as well as by the way in which it is possible (or not) to create a relationship of cooperation between medical staff on the one hand, and patients on the other.

Regulating the right to health is very important, because it generates a first benefit, that is to set up a coherent horizon which we have to report on during this particularly demanding period due to the occurrence of Sars Cov2 virus. A second benefit could be related to the size of social movements that have taken place, in this case recalling the move for social justice in the area of medical services insurance, through which people drew attention to the extreme need for specific landmarks in society, campaigning for patients' rights to be respected and ensuring access to affordable healthcare.

Thirdly, the new world order which is emerging will be able to influence people's behaviour and this will lead to macro-economic consequences, but the state will have the real mission, it must take on its mission in terms of compliance, protection and fulfilment of health-related responsibilities with a high impact on social or economic issues (Kinney, 2001, p. 1460).

Unfortunately, we will not be able to stake on changing the social behaviour in every social categories, because, on example, those in extreme poverty, who are socially marginalized anyway, homeless persons, migrants, imprisoned people, climate refugees will not be able to adapt to these new standards of social behaviour and in their case, social justice draws attention to the decisive criteria revealing social differences which, by their nature, may negatively influence the exposure to the virus (Yamin, 2020).

For this reason there are voices advocating to learn how to live with the virus, but it is not just the way in which we are prepared to live with this pathogen agent, but the desire to change the social behaviour which can stop the spread of the virus. The virus continues to undermine an essential dimension of our existence: sociability, our natural desire to live together, to communicate, to change opinions, travels, etc. What we are living today has received a connotation too hostile for the humanity.

## 2. Theoretical background

The financial instability in the euro area grows the spectre of a sovereign debt crisis. The excessive private debt raises the fear of another devastating financial crisis. The containment to which we are subjected by restricting the right to freedom is the antithesis on which globalization is based. The world economy is literally at a standstill, people’s movement is prohibited, and the borders close at a speed which not even the most radical nationalists would not have dared hope for it. Philip Alston, special rapporteur on extreme poverty and human rights, have warned that the pandemic generated by COVID-19 could propel more half of billion people in poverty. It is necessary that states take measures adapted to the new economic order which is not very optimistic. These measures have seemed impossible just a few months ago, including nationalization of health systems, providing direct cash allowances and the suspension of house expulsion and mortgage prescriptions among others. However, under the current circumstances, too many other countries moved toward the application of outdated favouritism systems, but also of an autocracy, in which we are treated similarly and where truly vulnerable populations are neglected. (Yamin, 2020).

The ability of governments to face with the pandemic will determine their political future. A lack of efficiency in this area would inevitably exacerbate the crisis of legitimacy of government parties the national-populist camp could benefit from, by proposing the restoration of order to simply make permanent the authoritarian and security measures that government are obliged to take. If they were be successful, leaders could even come out with greater legitimacy after the pandemic, but it is not to be neglected that only international cooperation is capable of resolving effectively a global issue. Therefore, the principle of cooperation between nations must be reiterated (Zacharie, 2019).

The global crisis caused by the Covid-19 pandemic is also an opportunity, because it shows us that states are able to take radical measures to respond to the health emergency situation. This awareness can be beneficial in other crisis – environmental, economic, social democratic – for which the Covid-19 is a strong indicator.

The Covid-19 pandemic appears in an unstable and dangerous international context. The brutality of the external shock that it represents is for our societies a strong indicator of global crisis in our time.

The Covid-19 pandemic is first and foremost a health crisis that puts the lives of thousands of people in danger and threatens with suffocation of health systems generally weakened by years of austerity. It also causes an environmental crisis, making the environment unfit for life in society, but simultaneously it reveals a social crisis that was already evident.

The poorest and the most vulnerable are the first victims of the virus, especially in countries without universal public health system. Those without a fixed residence in which to stay contained cannot find anything to survive on the deserted streets. Asylum-seekers crowded in camps where hygiene is poor are left to themselves. Poor countries in Africa are facing the pandemic, while their underdeveloped health systems are already suffocated by other epidemics.

This creates the need to establish a protection framework and guarantee of human rights which recognises health as inherent in politics – intimately related to the social context, ideologies and power structures– but, at the same time it removes health policy decisions. As in the case of all international human rights, the implementation and application of health law are critically dependant on the legislative and judicial actions at the national level.

The right to health is part of standard sets of human rights agreed at international level and it is inseparable or “indivisible” from other rights. Related to the Universal Declaration of Human Rights, Gruskin and collaborators claim that “the interrelated nature of the rights expressed in this international instrument establishes a responsibility that extends beyond the provision of essential health services to address health determinants, such as providing adequate education, housing, food,

and favourable working conditions”, following the idea that these provisions “are human rights themselves and they are necessary for health” (Gruskin, 2007, p. 250).

### 3. Research methodology

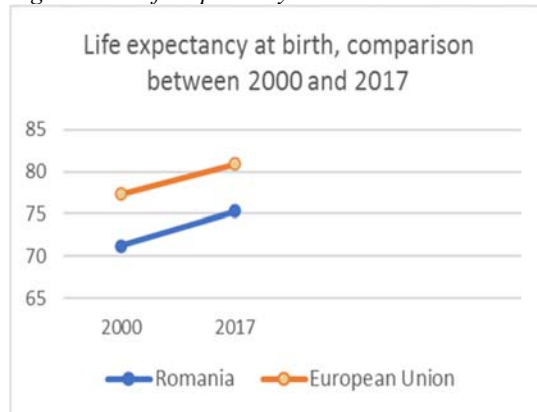
The pandemic raises awareness about the necessity to work together to future generations from the consequences that it entailed by now. We must mobilise ourselves in post-crisis collective actions to succeed together in restoring a global economic global order focused on respect for human rights. The right to health has acquired a collective dimension, so the human behaviour, even isolated, can affect us all alike (Gruskin, Mills, and Tarantola,2007).

What we get depends on how we act collectively, for the same purpose, but it also depends on how we, in turn, act to demand governments and other powerful actors to realize that it is in our interest and in the interest of all mankind that our fundamental rights be protected.

Covid-19 also reveals a deep economic and financial crisis. The current situation can be described as a spark on a barrel of gunpowder, because we are now experiencing an unprecedented shock that gave us a deep shake and it woke up at a different reality, a new world order is suddenly emerging. This economic shock announcing a deep global recession has caused a financial panic which led to a collapse of the value market. Winnings recorded on Wall Street under the chairmanship of Donald Trump have disappeared almost completely in a few weeks.

If we were to do a quick analysis of the data of the last years on life expectancy after infection with Sars Cov 2, as well as the Romanians’ statements who, in their opinion, have a good to a very good health status, we would be tempted to believe that Romania is has a strong health system. However, by examining thoroughly the survey and by making a comparative analysis of the data (by placing Romania in relation to the other Member States of the European Union), and analysing the life expectancy of Romanians infected with Sars Cov 2, who have also comorbidities, we can see that things are not as good, our country remains the Europe’s bottom line in this respect.

Figure no.1 Life expectancy at birth

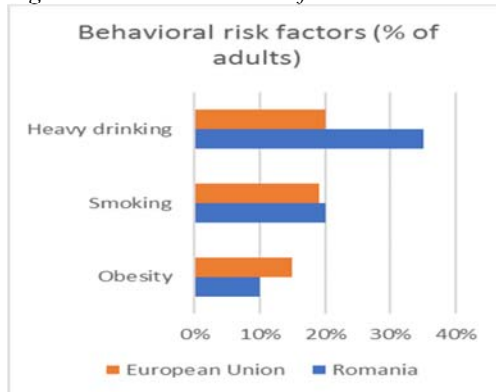


Source: made by the authors

If we take a look at the graph, we can notice that there are still very large discrepancies between Romania and the EU average and this reveals both the existence of deficiencies not at all to be neglected as regards the provision of health services, and the prevalence of unhealthy behaviour among the population.

It has often been discussed in relation with the evolution of the virus both human behaviour, living standards, quality of life, physical activity done, so we considered it appropriate to analyse Romania’s state of affairs in terms of behavioural risk factors. As we can notice in Figure 2, the rate of obesity among adults is one of the lowest in European Union. This contradicts the statistics concerning the lifestyle among Romanians. We mention this because 59% among Romanian adults have declared that they do not consume fruit and vegetables on a daily basis, and they have not a very healthy diet. In addition, 38% of adults admitted to have moderate weekly activity.

Figure no. 2 Behavioral risk factors



Source: made by the authors

We cannot say the same when it comes to the rate of obesity among children, it is growing steadily, reaching 15%. Unfortunately, the political instability in recent years led to a neglect of health and promotion of a healthy lifestyle in schools, as a consequence the results are becoming more visible.

In recent years we have noticed a massive campaign against smoking through all channels in an attempt to raise awareness among the population of EU countries on its harmful effects on health. Unfortunately, it has only managed to achieve its goal in a very limited manner; smoking remains a major challenge for our country, too. It is pertinent to mention here that Romania has one of the most important rates as regards smoking among young people aged 14 to 16.

Another serious concern is the excessive consumption of alcohol, among both adults and teenagers. According to data published in 2019, the excessive episodic consumption of alcohol in Romania is 35%, while the European Union average is 20% (European Commission, State of Health in the EU, Country profile in 2019 in terms of health).

Figure no. 3 Heavy drinking



Source: made by the authors

Looking around, we can see that health is not really valued only when it starts to be affected and the signs of disease appear. This is due to an inefficient and deficient promotion of health in Romania, which led to one of the highest avoidable mortality rates by prevention among the European Union countries.

These data represents a sign that social justice's desiderates focusing on the right to health, have failed to achieve their purpose or they were sporadically fulfilled. In fact, the last few years have seen inadequate and inefficient investments in health care. We believe that it is necessary to mention here both the existing shortcomings in the provision of health services and the social-economic inequalities existing in the various regions of Romania, even the obviously imbalance existing between primary and hospital care.

#### 4. Findings

We consider that a comprehensive reform process is needed in health, and we state this because the reality on the ground does not in any way reflect the intensification of plans to reform the Romanian health system, as we were promised each time a new health minister has been appointed, in the long term they have proved to be rather fragmented just because of political instability and governance. As we have shown through research, in recent years all changes and improvements of our health system have been poorly coordinated and, implicitly, with minimal effect at national level.

First and foremost, more political stability is needed in our country. In last 11 years, Romania had more than 15 health ministers from various political parties and each of them with a "vision" on how the process of healthcare reform should be done. This has led only to a fragmentation of the measures which, because of the lack of continuity as health minister either they have not been implemented, or they have been given up on the way while other people were being in this position.

Secondly, an additional training of professionals working in the Romanian healthcare system is required, in order to encourage them to inform patients each time regarding their rights, obligations, as well the diagnostic, therapeutic indications and possible complications that may present during the hospitalization or treatment.

Not in the least, there is a need for an intensification of health. The campaigns of the last few years which have been sporadic failed to achieve their purpose, and as a result Romania is the country with the largest number of tuberculosis cases from the European Union and a vaccination rate which is well below the EU average. We have a low life expectancy by comparison with the other European states and a high level of avoidable mortality through prevention, behavioural risk factors representing a major threat to the health of the Romanian population.

Article 35 of the Charter of Fundamental Rights of the European Union is addressed to health protection by claiming that, "everyone has the right of access to preventive health care and the right to benefit from treatment under the conditions established by national laws and practices." According to art. 52 of the same instrument related to fundamental human rights, any limitation on the exercise of the rights and freedoms recognised must be provided for by law, necessary, and respect the essence of those rights and the principle of proportionality.

The European Social Charter under art. 11 guarantees the right to health protection, underlining the main objectives to be pursued by the signatory states in order to achieve it. These objectives include eliminating, as far as possible, the causes of poor health, providing health advisory and education services and developing the sense of responsibility for health of individuals, but also the prevention of epidemics, endemic diseases, and other types of diseases and accidents (Lenia, 2002, p. 296).

It is also mentioned the obligation of states to make any necessary effort, for ensuring the objectives, through establishing a fair public health policy, measures to protect the health of mothers, children and elderlies, measures to prevent environmental and alcohol consumption or drugs, a medical and health system, measures relating to vaccination, disinfection and control of epidemiological diseases, etc (Zacharie, 2019).

Thus, we can argue that the right to health protection, as a fundamental human right, is a comprehensive right, characterized by the substantive and procedural composition.

This is actually a claim-right, which means the state has general positive obligation to guarantee this right, obligation supplementing the provisions referred to in the international human rights treaties (International Covenant on Economic, Social and Cultural rights and the European Social Charter (Zacharie, 2020).

#### 5. Conclusions

All the provisions of the international instruments culminated in major changes to the legislation at national level, by achieving the health framework standard, i.e. Law 95/2006 on health reform, which regulates as a code the entire public health system in Romania (Kose, Nagle, Ohnsorge, Sugawara, 2020). As regards our country, the right to health protection is mentioned in art. 34 of the Basic Law according to which the law is guaranteed by the Romanian State (paragraph 1). The state is obliged to ensure hygiene and public health (paragraph 2). Constitutionally, the right to health

protection can be ensured only in correlation with the other fundamental rights set out in the Constitution of Romania.

According to art. 5, of the same Law 95/2006, the main functions of the public health which consist in promoting and developing policies, strategies, and programs which aim to ensuring public health in tandem with an intensified action on monitoring the state of public health. It is necessary during this delicate and unique period a rigorous planning focused on public health, on the concept of prevention and control of all diseases and epidemiological surveillance, being required to implement policies for strategic management of public health services to watch out for the population and to protect the population from the risks occurred. In addition, information, education, and communication to promote health, building partnerships with the community to identify and solve health issues, the assessment of the effectiveness, quality, and efficiency on health services will train and facilitate the access to health services, the development of human resources and the development of public health institutions being done in the interest of the citizens.

We need to integrate public health priorities in sustainable development policies and strategies.

COVID-19 was and still represents a public health emergency. History has shown that public health emergencies often led to stigmatization and discrimination against certain communities and groups or individuals affected. Urgențele de sănătate publică duc adesea la stigmatizare și discriminare față de anumite comunități și grupuri sau persoane afectate.

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