

**JOINT INTERNATIONAL  
CONFERENCES**

**10<sup>TH</sup> EDITION**  
EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES

**5<sup>TH</sup> EDITION**  
THE GLOBAL ADVANCEMENT  
OF UNIVERSITIES AND COLLEGES

## The Right to Health Care – National and International Regulations

Alina Mihaela Călin<sup>1</sup>

**Abstract:** One of the biggest challenges of the contemporary world is the guarantee and protection of fundamental human rights. We cannot talk about the rule of law, of a democratic society where, among the fundamental rights do not include the right to health protection. Based on these considerations, in this paper we have analyzed the importance given to protecting this fundamental right, both nationally and internationally. As a priority we have analyzed the identification of the social state as a prerequisite for achieving this right. Simultaneously, we have conducted a brief analysis of national and international legal provisions on the right to health protection.

**Keywords:** judicial value; public health; respect for dignity

### 1. Social State – A Prerequisite for Achieving the Right to Health Care

The right to health care provided in art. 34 in the Constitution of Romania cannot be treated without making the correlation with art. 1 paragraph (3) of our fundamental law, which provides the social character of Romanian state. In the special literature it is shown that the social state, as form of the state of right, is a very ambiguous concept, still promoted by our Constitution as a general principle (Dănișor, 2009, p. 48).

The same author shapes the content of the notion of state of social right, underlining its following characteristics (Dănișor, 2009, pp. 48-50):

- a) *Denial of the priority of formal mechanisms*, which supposes exceeding the formal vision not by denying it but simply by incorporating formal mechanisms for safeguarding the rights and liberties in a material vision upon the state of law, which means a determination of the state by the society;
- b) *The society determines the state*, which means subordinating the political constitution to the social one, reason for which art.1 paragraph (3) expressly refers to the ideals of the Revolution in December 1989;
- c) *The control of the constitution's constitutionality*, consequence of the state of social law, social justice assuring a control of the content of the law by a control of conformity of laws with the social principle and values and a control of constitution's constitutionality;

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<sup>1</sup>Senior Lecturer, PhD, Dunarea de Jos University, Romania, Address: 47 Domneasca Str., 800008 Galati, Romania, Tel./Fax: (+40) 236 46.13.53, Corresponding author: alina\_calin\_2005@yahoo.com.

d) *The normative autonomy of the state of law* against the interfacial concepts in the modern constitutionalism: power separation, controlled normative hierarchy, guarantee the fundamental rights and liberties, democracy;

e) *Complete the formal vision upon equality*, which supposes that the state of social law should have the mission of assuring equal chances for those in unequal situations and equal access to some social benefits for those suffering from a relevant difference.

In the doctrine of constitutional law it is stated also that the feature of social state of our country results not only from its nature but mainly from its functions (Muraru & Tănăsescu, 2008, p. 10). These authors show that the social state cannot be just a mere business partner, a simple observatory, but a participant that has to interfere, to have initiative and to intervene for achieving the common good. The social state has to protect the weak, underprivileged by destiny and by chance, to support the economic sectors that are in crisis but that are indispensable to promoting a civilized living, to provide functionality of some public protection services and social intervention.

In another opinion, the characteristic of Romanian state of being a *social state* means more a desideratum than a reality (Ionescu, 2003, p. 4), the attribute *social* highlighting especially the role of the state as guarantor of the general social good, of protector of general interest and elementary social needs of the individual disadvantaged by the market economy.

The doctrine and jurisprudence of the Spanish constitutional court considers that the rule of the social state has a big juridical value since it has the significance of a constitutional principle, directly applicable in interpreting any juridical commandment. This principle has consequences in determining the content and significance of individual rights. In fact, the notion opens towards an interpretation less *individualist*, which considers the idea of social equality.

But the importance of the notion of social state resides mainly in the fact that it involves the mandate of a positive action. This obligation to act that shall be materialized by the legislator is consolidated by the *guiding principles of social and economic policy*, dedicated also by the fundamental law. Based on the notion of social state, it is considered that the state has a social responsibility in achieving the social and economic order, which involves the recognition of insufficiency to self-regulate the market and the competition. Thus, the notion of social state allows the justification of regulating economical activities (Lyon-Caen & Champeil-Desplats, 2001, pp. 36-36).

## **2 The Right to Health Care in Romanian Legislation**

Article 34 in our fundamental law, which provides the right to health care, is regulated as the right to study, as a claim-law, mentioning expressly in the constitutional text the general positive obligation for its effective guarantee: taking measures to assure hygiene and public health.

Without being a limitative enumeration, it may be considered that these obligations should include: measures to decrease the mortality of new-born and infant mortality, healthy development of the child, improvement of all aspects related to environment hygiene and of industrial hygiene, prevention and treatment of epidemic, endemic, professional and other diseases as well as the fight against these diseases; create conditions that provide medical services and help to all people in case of sickness.

The constitutional text also imposes the obligation to adopt special laws to organize medical assistance and the social insurance system for sickness, accidents, maternity and recovery, as well as other protection measures for the physical and mental health of the person and also the settlement of the

control of practicing the medical professions and paramedical activities (Lyon-Caen & Champeil-Desplats, 2001, pp. 35-36).

The provisions of fundamental law are detailed in Law no 95/2006 regarding the reform in the field of health, which presents and defines the obligations of the state provisioned in art. 34 in the Constitution.

Thus, the legal principles of public health assistance are in the responsibility of society for public health; focusing on population groups and primary prevention; preoccupation for the determinants of health status, multi-disciplinary and between sectors approach; active partnership with the population and public central and local authorities; taking decisions based on the best scientific evidence existing at that moment; is specific conditions, taking decisions according to the principle of precaution; decentralization of the public health service; the existence of an information and informatics system integrated for the management of public health.

The same law presents also the dispositions regarding the main functions of the public health whose efficiency depends to the highest extent on their implementation, of providing the material application conditions, the law to health care being one of the most costly rights for state but also one of the most important to assure complete development of human personality.

The right to health care cannot be discussed in the absence of the right to a healthy environment, which comes as a natural continuity of constitutional provisions regarding the first, and that reveals completely the right valences of third generation by the modality in which it is dedicated in the Constitution (Constantinescu, 2003, p. 73). The same author shows that the right to a healthy environment is a subjective right, but at the same time, also an obligation for any individual subject of law, our fundamental law making of the protection and improvement of environmental law a real juridical obligation for all subjects of law, individuals, legal entities pr state authorities.

Also, still in correlation to the right of health care, the connection between it and art. 22 in the Constitution cannot be avoided, which regulates the right to life and physical and psychic integrity. Thus, respecting physical integrity obliges both the public activities as well as other all the other subjects of law to the same extent not to damage physical integrity, of a person, under the sanction of applying the legal rigors. The same, the right to psychic integrity is protected and considered as having constitutional value and the interdiction of torture involves, naturally, respecting life and the physical and psychic integrity.

The right to protect health is provided by a series of occidental constitutions: art. 41 in the Constitution of Switzerland, art. 23 paragraph 2 in the Constitution of Belgium, art. 68 in the Constitution of Poland, art. 19 paragraph (3) in the Constitution of Finland, art. 32 in the Constitution of Italy. The right to health is recognized in more than 100 National Constitutions, either explicitly, or implicitly, by stipulating the obligations of the state regarding health.

### **3 The Right to Health Care at International Level**

In France, the right to health care is a complex right that includes the right of access to medical care, the right to continue the treatment, the right of being informed upon the right as a patient. Thus, the extremely detailed legislation led to forming a new branch of right, *the right of public health*.

Whatever the nature of the institution (public or private) in which the patient is treated, his rights are protected by the same legal texts. Thus, the Code of public health, the Code of medical deontology or

the Decree on 14<sup>th</sup> of January 1974 regarding the functioning rules of hospitals and local hospitals, establish essential rules regarding the patient's conditions in public health units.

At the same time, the Charta of the hospitalized patient (circular from 6<sup>th</sup> of May 1995) is applicable not only to health public units but also to private units, in the virtue of Ordinance on 24<sup>th</sup> of April 1996, codified by art. L. 1112-2 in the public health code. Contemporary society is, in fact marked by a demand of an *administrative citizenship* leading to a renewal of the relation between governors and administered ones. The medical sector, both the public and private, do not escape this movement represented by the idyllic triptych of a more transparent administration, closer to the persons being managed and more responsible. In this way, the period of a closed hospital administration refusing the dialogue with the users, not bothering and not losing the time explaining the medical care activities, otherwise said settling the patient to the state of *sub-citizen* (Fraissex, 2010, pp. 665-672), is no longer tolerated. The legislative, regulatory and jurisprudential evolutions in the last years are written in France, in this dynamics.

#### **4 Conclusions**

Thus, it is worth mentioning Title II – *About sanitary democracy*, of the Law on 4<sup>th</sup> of March 2002 regarding the patients' rights and the quality of health system, which gives the sick person opposable rights to medical body and to health units. Within the important rights list of the patients that it regulates, this law distinguishes, on one side, between individual and collective rights, and on the other side between the rights of the person (non-discrimination in what regards the access to health care, respect of dignity, the right to consider pain, the right to receive the most suitable care, the right to respect private life) and the rights of the user of health services (the right to medical care for the underage that do not wish to inform their parents about their health state, the rights of the persons suffering from psychical disorder, hospitalized of office or upon a request of a third party, commitment of the patient's consent to provide a medical act). Regarding the collective rights of sick persons, the law gives a complete institutional recognition to their users and representatives.

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