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HR Standards as a Foundation for Human Security and Health Policy: Legal and Ethical Issues

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Abstract:

Purpose: *The COVID-19 pandemic has resulted in the necessity for public authorities in all European countries to seek measures which would streamline combating threats to health and life while ensuring that the fundamental rights and values of their residents are respected. It appears that the right to healthcare in general, and the redistribution of the goods which are the most crucial for patients, in more specific terms, as well as decisions related to the final allocation of those goods, have become areas of conflict.*
Design/Methodology/Approach: *In this article, we take note that the decision of an individual physician to undertake or abandon treatment is a critical dilemma to be faced in the light of respect for patient's right to health and protection of life.*
Findings: *The implementation of human rights standards (ECHR) for medical ethics requires taking into consideration the quality of health care services, the appropriate standard of health care, and equal rights of every patient and respect for such rights.*
Practical Implications: *A correct analysis of the ECHR Standards in question may contribute to the development of an appropriate health policy model based on the principles of respecting the rule of law, considering patients' rights as well as physician independence. It should also take into consideration a call for the efficient allocation of public funds in health care.*
Originality/Value: *The publication systematizes the most important issues of human rights standards in public healthcare system.*

Keywords: *Efficient allocation of public funds, human rights standards, health care, respect for patient`s rights, medical law and ethics.*

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1. Introduction

The COVID-19 pandemic has resulted in the necessity for public authorities in all European countries to seek measures which would assist in combating threats to health and life while ensuring that their citizens are guaranteed respect for fundamental rights and values. The measures adopted to combat the virus must meet the requirement of adequacy while respecting the fundamental values of the European Community in terms of human rights, democracy, and the rule of law.

It appears that the right to healthcare in general, and the redistribution of the most crucial goods from patients' perspective, in more specific terms, as well as decisions related to the final allocation of those goods, have become areas of conflict. In this context, there arises a conflict between the ethics of public health medicine and medical ethics. As regards patients' right to health, we are dealing with certain issues related to the antinomy of goods and obligations.

The clash of goods and interests not only affects the doctor-patient relationship, but in the context of the pandemic, it also affects ethical values such as security in the health system or security in general, and ultimately concerns interests that are important and relevant to economics. The conflict between legally protected goods and medically important goods is based on legal and ethical valuation. The decision of an individual physician to undertake or abandon treatment is a critical dilemma to be faced in the light of respect for the patient's right to health and protection of life.

Searching for a moral and legal point of reference to justify the scope and form of specific medical interventions is also of great importance in the education of physicians and other professionals in the medical services sector. Therefore, it appears justified to adopt a human rights-based approach to goods management in the ethics of public health medicine and medical ethics. In this respect, human rights standards are instruments which guard human life, indicate that its protection is the most important systemic principle at the hierarchical level, and in correlation with their being based in the imperative of respect for human dignity as the source, they constitute an imperative for treating human beings subjectively (Bieńkowska *et al.,* 2020). Therefore, it should be pointed out that dignity is always primary to positive laws – the existing legal regulations.

2. The Human Rights Standards of the Council of Europe in Health Care

The pandemic situation demonstrated a significant decrease in the indicators of respect for human rights. The European Commission has noted attempts to reduce pluralism and weaken important supervisory authorities, such as civil society and independent media, as signals warning of threats to the rule of law and thus to respect for the protection of individual rights.

The implementing measures undertaken in response to the COVID-19 pandemic were, in some cases, in breach of the principles of the rule of law adopted by the Council of Europe and directly restricted the rights and freedoms of individuals in some countries. This had a direct impact on health care and the patient-physician relationship. Quite frequently, physicians found themselves in a stalemate, forced to limit the provided care due to economic and political reasons (access to ventilators, etc.).

At the same time, it should be pointed out that international norms, standards, and recommendations on human rights constitute an ethical and moral imperative for respecting the principles applicable to the issues at hand. Those are primarily the standards devised by the European Court of Human Rights (ECtHR) based on the European Convention on Human Rights (ECHR), including equality before the law (Articles 6 and 7 of ECHR); the right to liberty and security (Article 5 of ECHR); respect for human dignity and human life (Article 2 of ECHR); respect for privacy (Article 8 of ECHR); and prohibition of torture and inhuman treatment (Article 3 of ECHR). At the same time, it is worth noting that the ECHR has become one of the 'most powerful instruments in seeking protection against abuse of power ... and in some countries ... an alternative to domestic remedies' (Bodnar, 2019). These can be of normative and non-normative nature.

In correlation with the adopted declarations related to medical ethics, they specify the content of human rights which patients may claim under the ethical principles binding on the physician. As indicated by H. Anrys 'Ethics shields all human rights, which stems from among others the Declaration of Helsinki of 1964 and the Venice Declaration of 1983, adopted by the World Health Organisation (WHO)' (Andrys, 1996, 32). It is worth noting that in the present conditions characterised by a peculiar approach to human rights standards and a widespread agnosticism in human rights, there is an urgent need to anchor medical ethics (sensu largo) in human rights (Łętowska, 2020).

A human rights-based approach to medical ethics indicates that the activities of the European Community countries in the field of health care should be in line with the fundamental principles of the rule of law, transparency, inclusion, participation, accountability, and non-discrimination. Given the gravity of the issues related to health care, more so than in other areas of law, it is required to interpret legal norms through the lens of human rights standards.

This is in search of an understanding of the function of the principle of justice and the legitimacy of specific decisions, as well as to understand the principles of providing aid to protect health and life. Without knowledge of human rights, it is not possible to have a proper discussion about current legal solutions and their evaluation, so they could best protect the individual.

Moreover, the value of this discussion, as well as the potential conclusiveness of its verdicts, will be of key importance in the areas of security and education of medical professionals (physicians, nurses, etc.), specialists in medical law, and health care managers, as well as in building legal awareness among patients and their families (Cooke, 2010).

3. The Subject of Care: Divergence or Convergence of Ethics?

Public health ethics focuses on the health of the population, not the individual, as it is the case in medical ethics. This gives rise to many doubts, accompanied by the following questions: 'Whose health do we actually worry about, who is the object of care? Ultimately, what is the cost that an individual needs to bear to achieve the objectives of public health'?

All answers to these questions must take into account the fact that public health ethics is mostly related to the activities of the government; however, its is physicians who ultimately administer the goods which are vital from the patient's point of view. In this context, the subject of care, i.e., patients, both in a general sense and individual people, form part of the convergence of the two ethics (medical ethics and public health ethics).

Whatever the scope of medical intervention in a legal, economic, social, and political sense, diagnosing, treating, and saving a patient's life is always carried out within the relationship between a patient and a physician (Strech, 2009). The patient may have many different rights, normatively exhibited in normal legislation anchored in the standards of the political system. What is important, nevertheless, is that what he or she requires from the physician is immediate assistance to save his or her health and life.

A pandemic situation exposes the issues in question well. At the same time, it should be referred to a general system of universal ethical values. This system will be used in various, often unpredictable situations: in making quick decisions to organise health care in human society, to develop standards for public policy, and to develop and shape good relations in the immediate environment. In a crisis, there is too little time to think about individual actions, which is why it is necessary to develop beforehand those ethical standards which are to be prioritised. These must not divide societies, creating additional burdensome situations. On the contrary, they should unite social groups in order to overcome difficulties.

Therefore, decision making and the allocation of medical technology should be based not only on the guidelines of the ethics of public health care, created top-down by often non-accessible health systems at the national level, but should be first and foremost guided by universal ethical values based on the framework created by ECHR standards. The common ethical and legal values developed and recognised by the community are of use in determining priorities in terms of rationing out

resources and technologies: the priority of access to resources by specific individuals, the rationalisation and restriction of access to scarce goods, and the allocation and deployment of material resources for specific purposes (e.g. ventilators).

Furthermore, human rights standards define the responsibilities as regards managing the health system and the coordination of medical activities, which, from the point of view of medical ethics and public health ethics, often give rise to contradictory attitudes and different approaches. Therefore, it is necessary to define common axiological standards.

4. A Human Rights-Based Approach to Health Care Practitioners

The COVID-19 pandemic has demonstrated in a very short time that society is based on relationships. These relationships are mainly (apart from family and friendship relationships) a form of business transactions or contracts. Undoubtedly, the relationship between the physician and the patient and other medical providers is one of those. Nevertheless, they require increased ethical vigilance, as due to their asymmetric nature, they are based overwhelmingly on trust (O'Neil, 2009).

It is no exaggeration to say that physicians have strong trust obligations towards patients. Therefore, patients' interests should surpass any competitive factors. At the same time, the obligations imposed on physicians compel them to act legally and ethically. While there may appear tensions and discrepancies, as well as similarities, between the legal and ethical obligations of a physician, it is dictated that the law as well as ethical guidelines are followed. This issue is evident in the context of the modern pandemic debate on making decisions on the priorities for and allocation of use of advanced medical technologies.

In this field, ethical rules supplement legal standards developed by the human rights protection system. Depicted in this way, they refer to medical law whose core is composed of the legal relationship between the patient and the medical personnel. It should be stated that this sphere of legal relationships has always been a subject of legal determinations and analysis ... and starting in the 19th century, the topic of medical organisations and healthcare institutions has also become a subject of legal regulations.

Given the above, the subject matter addresses all issues which also go beyond the traditional legal framework, becoming more and more often an area of diverse systems for the distribution of medical services given the different health systems and models.

Therefore, the matter at hand also touches upon very sensitive aspects of human existence, such as human autonomy, dignity, and freedom of choice, all of which require a more in-depth ethical consideration. These categories provoke questions of

an axiological nature related to respect for the patient as a person, following the principles of justice and equality.

It is worth noting that ethics is a broader system than law in a semantic and normative sense. While law refers primarily to regulations encompassed within the legislation, ethics constitutes an imperative to act within the specific rules of honesty and disinterestedness. In a way, it particularises rigid legal rules. Beauchamp and Childress (Beauchamp *et al.*, 2013) indicate that the following principles of health care ethics are common and universal: Principle of respect for autonomy, Principle of nonmaleficence, Principle of beneficence, and Principle of justice.

In a crisis, such as a pandemic, where emergency measures need to be undertaken, there can occur a conflict of patients' claims as regards those principles. Therefore, it should be noted that, as per the accepted human rights standards and the principle of proportionality, the aforementioned four classic principles of medical ethics are considered to be non-hierarchical. This means that no principle is "superior" to others.

According to the literature on this subject, we are obliged to take into account all the principles applicable to a given clinical case. The process of urgent clinical treatment demonstrates that in emergencies there appear conflicts in respect of those rules and that there are situations where two or more principles apply (Herring, 2016). Then, a perspective based on a human rights-based approach for medical ethics is necessary. Human rights standards place the supremacy of medical knowledge higher in the hierarchy of values and rules than contradictory claims arising from the principles of ethics.

Ultimately, it is the physician, who, based on their prima facie view of the situation in correlation with the independence of their function, becomes the ultimate decision-maker on giving primacy to a specific ethical principle, which translates in practice into patient care. According to W.D. Ross (1939), *prima facie* obligations are always binding, unless in conflict with stronger or stricter obligations, such as legal standards. It should be noted that legal standards as such do not aspire to play a regulatory function in the medical domain.

Law is not predestined to solidify the use of medical methods or procedures and must be restricted to a role related to criteria from a normative area. On the other hand, the real obligations of a moral person are determined by the weighing and balancing of all competitive obligations *prima facie* in every individual case (Frankena, 1973; Gert, 1997).

In view of the observed imbalance of standards and the noticeable change in approach to many issues, there is an urgent need to familiarise physicians with human rights, also to strengthen their professional ethics.

5. (In)Justice

In the analysed research problem, it is the principle of justice which is the most controversial. The COVID-19 pandemic brought into light many ethical and legal weaknesses related to the effectiveness of health policy. In principle, justice in health care is supported by the Aristotelean *to each his own* (Aristotle, 1995).

Theoretically, this should refer to the just distribution of goods in society, i.e., to the health system – patient. When examining the effectiveness of this theory, it is noticeable that distributive justice is being restricted, as it is largely conditional on the availability of goods in a given health market. This was highlighted by in the past by John Rawls (1999) who stated that many inequalities that people experience stem from social and natural lotteries for which the individual must not be to blame.

Therefore, society should assist people in terms of equal opportunities by providing resources to overcome adverse situations. Such a standpoint, however, is difficult to implement as it is not society which ultimately administrates funds for health care but the state apparatus. The latter should be evaluated negatively in the context of protecting rights vested in patients since public health policy is rather based on wealth transfer and securing the interests of specific groups.

Given the above, one should answer the most pressing questions in modern health care: 'Who is the true beneficiary of health care?' and 'Who bears the cost of care?' These questions should be treated as open, as answering them requires much deeper analysis. For the purposes of this article, they are used as a tool to particularise the function of the principle of justice, indicating that this principle forms a strong motivation to reform the health system (both at the European and local levels), and taking into account the health needs of the population as a collective while respecting the individual patients with their specific, individual needs.

The principle of justice needs to be observed in medical practice, in the patient-physician relationship in the same force as in the medical law system and its enforcement policy. There are still many inconsistencies at this level and the system is inadequate for the needs arising from medical practice. The principle of justice, firmly rooted in axiology in medicine *sensu stricto* and in the health care industry *sensu largo*, has become inadequate – increasingly taking the form of distributive justice.

This results in the responsibility for the appropriate care of the health of the population being transferred from the state, at different levels of its authority, to individual private-law responsibility, becoming, at the same time, a joint responsibility (Danzon, 2000). In the doctrine, arguments are being raised that public health policy is deviating from the principles on which it is based. It is largely ineffective as it more and more fits in the aforementioned scope of wealth transfer

6. Conclusion

The subject of human rights involves many interesting threads of research, with accents from the political, legal, and cultural areas, but also from a very personal domain, where what matters is a very limited scope of values relevant to an individual. In addition, there are individualistic symptoms which often relativize the concept of human rights.

In the context of the conducted research study, human rights are understood as fundamental rights which are vested in man, belong to the sphere of obligations, and are understood as rights forming the basis of claims. Following the authors of the Universal Declaration of Human Rights, they will be construed as rights which do not need an ideological justification, and rooting them in human dignity is to serve legal and ethical intercultural dialogue.

Such a depiction originates from anthropology, which researches the human being himself as well as his condition in the world. Anthropology as important universalitier reconciles the diversity of cultures, opens one to otherness, and sensitises people to other human beings. Humanity, person, dignity, and subjectivity are the crucial categories in this respect.

As regards human rights in medicine, it is important to determine their meanings and functions precisely, as the terms used are no longer distant from human existence but result from experiences to which they relate. Guido Gerin notes that ‘human rights are vested in human beings from the day they are born. Evidently, those rights refer to the whole human being, and consequently to human dignity, liberty, and health’ (Gerin, 1996).

Therefore, human rights are a special tool in creating legal standards in medicine and understanding the obligations of physicians towards themselves and in their relationships with patients. They include ethical and moral imperatives, and ask: ‘Who is a human being as an autonomous entity exercising freedom of choice and action?’. Who is the entity experiencing the cruelty of suffering caused by illness.

The profession of physician refers to care and protection of patients’ health. Thus, it touches on the domain of human life which concerns the individual’s fundamental rights, the values that are of the utmost value to him or her. Therefore, medicine needs human rights in several dimensions. First, as tools to contemplate reality and create concrete attitudes to human rights to sensitise individuals to human suffering.

Second, to understand that human rights are part of positive rights which are directly associated with the legal regulations applicable to physicians whenever they provide health services. Furthermore, in medical practice, there are many issues, where legal, ethical or even strictly religious problems intersect, and where the language of

human rights based on respect for human dignity, often makes it possible to overcome crucial challenges.

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