

The principle of non-discrimination, equality and prohibition of preferential treatment in medical practice.

The social problem of discrimination which affects the medical field

RALUCA MARINELA SILAGHI

PhD Student in Philosophy
Babeş-Bolyai University, Cluj-Napoca, Romania

Abstract:

The Universal Declaration of Human Rights states the fundamental rights that any person should enjoy at all times, but it cannot absolutely guarantee their effectiveness, either because it does not have the status of a law, or because the people themselves have not become aware of the importance of these rights and freedoms, both for their own wellbeing and for the well-functioning of the states in which they live. One of the domains most affected by the phenomenon of human discrimination is the medical field. According to the Code of Medical Deontology and to the national laws concerning the medical field, to guarantee the right to healthcare, considered through the prism of the necessity for non-discrimination, of maintaining equality between patients, is considered a fundamental element of medical ethics, a professional duty for the physician belonging to his responsibility of treating people, of helping them get healthy, without considering whether they are wealthy or poor, good or bad, but only in virtue of them being human. The first essential principles for the medical profession, for staying true to the goals for which medicine itself appeared and for success in making discrimination in the medical field disappear (unequal treatment of people, privileged treatment given to some, coupled with less than optimal care for

others), are legality and respect for the values, principles and deontological norms affirmed by the national legislation and by the code of deontology of the profession, and, not in the least, the respect owed to the patient as a human being possessing certain rights and freedoms.

Key words: The Universal Declaration of Human Rights; the principle of equality; the principle of non-discrimination; the right to healthcare; medical ethics; respect owed to the patient as a human being possessing certain rights and freedoms.

INTRODUCTION

The fundamental principles of the 1948 Universal Declaration of Human Rights – adopted by all democratic countries, Romania being among them –, pertinent here being the principle of equality between people as an inalienable right both before the law, as well as regarding the equality of chances, the principle of non-discrimination, referring directly to the respect owed to human beings as such, and the principle of the exclusion of privilege – are embodied at the level of their transposition into practice by the other human rights, amongst which the most important are the following: the right of persons to security, the right of participating in public life, the right to freedom of opinion and expression, the right to freedom of thought, the right of access to all public services, the right to education and professional training, the right to health, to medical care, to social services, to employment. Any intentional trespassing against these rights, made on whichever grounds, is a manifest act of discrimination towards other people and an offense against them in their quality of human beings that ought to be respected in any situation whatsoever and who ought to be able to exercise their rights and freedoms at all times.

It is apparent now, at the beginning of the XXI century, that although the Declaration states the fundamental rights that any person should enjoy at all times, it cannot absolutely guarantee their effectiveness, either because it does not have the status of a law, or because the people themselves have not become aware of the importance of these rights and freedoms, both for their own wellbeing and for the well functioning of the states in which they live. Proof for this situation is the fact that discrimination as a social problem persists, undermining equality between people and the equality of their chances,¹ leading to the situation when some are privileged, usually those having a certain influential status, due to their favorable socio-economic position within society. If until the beginning of the XX century there were concerns only about racial discrimination² and discrimination against women,³ today the definition of discrimination is widening, both with regard to its

¹ People with disabilities are the most frequent victims of discrimination. In most cases they are not accepted on the job market even when possessing the same level of training as a non-disabled person. For example, there are blind students, that study at the same faculty as those with sight, who acquire the same abilities and qualifications in their fields of study as their colleagues, but who later, when finishing their studies, are not given the opportunity to work at the level of their training, the jobs being given to healthy candidates, who may not have the same expertise or passion for the respective job activities.

² African-Americans faced a deep-rooted discrimination in the USA due to their skin color, having been denied basic rights long after the abolition of slavery (voting, right of access to equal education or to equal employment). As reparation for these injustices, there are many voices that solicit that they receive preferential treatment in order to help those of them from disadvantaged socio-economic backgrounds to integrate into the society that not so long ago still rejected them. Preferential treatment may be understood as a first chance to occupy a job, with the requirement that the candidate be competent in the respective field and willing to perfect himself. This policy is intended to promote the equality of chances, enabling African-Americans to access any job position, provided they prove to be competent for it.

³ Women could not occupy a public office, had no voting right and neither the possibility to study or work in certain domains, like for example in engineering. In the Occident and in other developed nations things have since then changed to the better, women being able to learn and work in any field of specialization.

sphere of manifestation as well as that of its criteria of application. In its contemporary sense, discrimination is understood as “any differentiation, exclusion, restriction or preference based on nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, disability, non-contagious chronic illness, HIV positivity, belonging to a disfavored category, as well as any other criteria that has as its purpose or effect the restriction, the removal of recognition, use or exercise, in conditions of equality, of the human rights, of basic freedoms or of the lawful rights in the political, economic, social and cultural domain, or in any other domain of public life.”⁴

THE ANALYSIS OF THE PROBLEM OF DISCRIMINATION WHICH AFFECTS THE MEDICAL FIELD

One of the domains most affected, by far, by the phenomenon of human discrimination is the medical field. At this level, it may be argued that one of the direst forms of discrimination may take place, since it may endanger the health of human beings. The right to healthcare is a fundamental right of the citizen in his quality of being human, health being “the essence of life itself, a social human good”, as affirmed in the Universal Declaration on Bioethics and Human Rights, redacted by UNESCO, since without health, and without freedom of access to quality medical services, the life itself of the human being is endangered and, together with it, the exercise of all the other rights. Without being healthy, one may not enjoy life and what it offers.

⁴ Government Ordinance no. 137/2000 on preventing and sanctioning all stored forms of discrimination.

According to the Code of Medical Deontology and to the national laws concerning the medical field⁵, to guarantee the right to healthcare, considered through the prism of the necessity for non-discrimination, of maintaining equality between patients, is considered a fundamental element of medical ethics, a professional duty for the physician belonging to his responsibility of treating people, of helping them get healthy, without considering whether they are wealthy or poor, good or bad, but only in virtue of them being human.⁶ The first essential principles for the medical profession, for staying true to the goals for which medicine itself appeared and for success in making discrimination in the medical field disappear (unequal treatment of people, privileged treatment given to some, coupled with less than optimal care for others), are legality and respect for the values⁷, principles⁸ and

⁵ Law 46/2003 on Patients' Rights, Law 95/2006 on Healthcare Reform; Government Ordinance no. 137/2000 on preventing and sanctioning all stored forms of discrimination.

⁶ "Support me, Almighty God, in these great labors that they may benefit mankind, for without Thy help not even the least thing will succeed. Inspire me with love for my art and for Thy creatures. Do not allow thirst for profit, ambition for renown and admiration, to interfere with my profession, for these are the enemies of truth and of love for mankind and they can lead astray in the great task of attending to the welfare of Thy creatures. Preserve the strength of my body and of my soul that they ever be ready to cheerfully help and support rich and poor, good and bad, enemy as well as friend. In the sufferer let me see only the human being. Illumine my mind that it recognize what presents itself and that it may comprehend what is absent or hidden. Let it not fail to see what is visible, but do not permit it to arrogate to itself the power to see what cannot be seen, for delicate and indefinite are the bounds of the great art of caring for the lives and health of Thy creatures. Let me never be absent- minded. May no strange thoughts divert my attention at the bedside of the sick, or disturb my mind in its silent labors, for great and sacred are the thoughtful deliberations required to preserve the lives and health of Thy creatures." The Prayer of Moses Maimonides from <http://guides.library.jhu.edu/c.php?g=202502&p=1335755> and cited in Vicol, C. "Nondiscriminarea grupurilor vulnerabile: de la etică la responsabilitate medicală". In *Romanian Journal of Bioethics*, vol. 9 (2011), no. 4.

⁷ Ideal / aspiration, that we want to reach: for example righteousness, happiness, dignity.

⁸ Prohibition or prescription that guide us towards achieving moral values

deontological norms⁹ affirmed by the national legislation and by the code of deontology of the profession¹⁰, and, not in the least, the respect owed to the patient as a human being possessing certain rights and freedoms (as is the physician, too). Without the practical application of these principles, the aim of the medical profession as such, of bringing cure to all those afflicted with illness, is lost, the physician turning his art towards obtaining profit, even through illegal means (like the infraction of corruption that will be discussed more below), doing his job carelessly when it doesn't prove profitable, up to discrimination against patients and favoring some to the detriment of others. In my opinion, respect for people is not something formed during professional training, it must pre-exist university studies, being a guarantee for quality services provided to all future patients. Non-discrimination in offering services manifests itself in the quality of their totality, treating each patient with the same degree of seriousness, involvement and care, even if the respective patient is in terminal state, and without taking into consideration race, material situation, age, social background, or any personal antipathy of the physician towards the patient. Quality healthcare requires that the relation between physician and patient should be based on trust and reciprocal respect between the two, stemming from the active involvement of the physician in fulfilling his duties, from open communication with every patient, and from transmitting a positive, optimistic attitude to the patient, as hope that he will get better. Building such a relationship is more of an obligation to the family physician, who, due to his

⁹ The moral rule defends the moral values which are vital for an institution and for each of its members. It tells one what to do and what not to do in a given situation.

¹⁰ The code of ethics and professional conduct, which should act as a guide, an example of ideal conduct, to which each employee of that institution should adhere, which they should internalize (that is they should identify themselves with the principles and values which are promoted), and which should obviously apply when exercising their work duties.

function, may have access to information regarding the whole family of the patient, being thus able to diagnose more quickly and more precisely the patient's medical problem. The importance of forming and maintaining a relation of trust and reciprocal respect between physician and patient may be glimpsed in the case of the oncology patient. The physician must be cautious, not allowing the patient to interpret any action or spoken word as a form of rejection due to his illness. The physician must also keep fighting that the patient maintains the trust to communicate openly to him and not lose optimism, the hope that he will get better. Without these, the patient may close himself up, isolate himself, falling into despair, losing the battle with the illness.

If there is no correspondence between the professional values and principles (those prescribed by legislation and medical deontology) with those privately held by the physician, in other words if he has no love and respect for people, no pleasure of daily practicing his craft, no desire to cure and reduce suffering, thus contributing to the maintenance of a healthy community, then there will be also no active involvement, no devotion to duty and neither quality services, all these bringing about the negation of the very purposes of the medical profession and of the physician himself, who will concentrate solely on gaining profit, even to the point of performing superficially the less profitable tasks, or else sink to the level of only doing enough in order to keep his job.

At the level of the physician's professional integrity, discrimination may manifest itself mostly as not treating equally every patient, favoring some to the detriment of others, even refusing to consult certain patients, or as trying to gain some undue benefits from certain patients (especially from vulnerable persons with a precarious socio-economic situation that are in urgent need of healthcare). Many times one may see being given priority at consultation to kin or friends of the

physician, who also benefit from better medical services, from more attentive care from the physician in solving their medical problems. This is a kind of discrimination, affecting the rest of the patients, especially those in worst state of health than those that are being given undue priority, who are left waiting their turn to receive the physician's attention. The selection of priority patients must be made only on medical criteria, in function of the gravity of the illness. Also, both law and common sense demands that priority care must be given to patients belonging to the category of vulnerable persons: pregnant women, children, disabled persons and persons with grave chronic illnesses. According to law, the physician is forbidden to refuse to consult a patient, especially if it is the case of an emergency. This would be a dire case of discrimination, since the patient is a human being that has certain rights, between which is also that of having access to quality medical care, and, secondly, because the patient's health being in a precarious state, the possibility of healing him, even saving his life, stands only in the hands of the physician. Mass media often reports cases of Roma ethnicity persons receiving differentiated treatment, in a negative sense, receiving only superficial medical consultation and being prescribed with only palliative drugs, there being no active commitment from the part of the physician, who at most times has an aloof demeanor towards them or, in the gravest cases, even outright refuses to consult them.

Discrimination against patients, voiding the equality which ought to exist between them, may also manifest itself through the demanding or accepting of undue benefits, especially from persons with grave health issues (and especially from the most vulnerable, who may be more easily swindled, made to offer money to the physician) – their health, upon which their very life depends, being put into jeopardy – with the purpose of providing them with adequate medical care or

that of performing an act that contravenes to the physician's duties (for example, writing a certificate stating that they are healthy, when it is not the case). This amounts to an infraction of corruption, committed by the physician in his quality of being a public servant, a member of the public health system (accepting bribes or pretending undue benefits) that appears due to the infringement of the principle according to which public interest (that of curing people) must prevail over the personal one of the public servant (that of obtaining profit). The physician must not accept gifts before fulfilling an act that is his duty (bribe), neither afterwards (receiving undue benefits), on the contrary, he should reject them politely, because he is being paid to do his job, and is not permitted to receive such "bonuses". He must not take advantage of his status and function, pretending money or other undue benefits, in other words he must not be corrupt or prove himself to be corruptible.¹¹ Pretending, receiving money or other undue benefits, accepting the promise thereof or not rejecting it outright, all constitute bribe taking. It is not necessary that money actually change hands, the infraction takes place the very moment the physician asks for the bribe, or accepts the promise of it, or does not reject such promise. As it may be seen, the passive attitude (non-rejection) is also punishable, being considered that it is a tacit acceptance of the bribe. In order not to become guilty, the physician must expressly reject both bribe attempts, as well as offers of undue benefits as rewards for the quality of services rendered to the patient. It has been (unsuccessfully) attempted to solve the problem of corruption in the medical sector by the proposal of creating a system of donations, as rewards for quality services rendered – donations directed towards the hospital, from which the treating physician would have received a quota. If the implementation of such a donations system would probably indeed solve the issue

¹¹ Providing services, properties, free trips, rise of position/rank, etc.

of the pervasiveness of bribes in the public medical sector, it does achieve this end only by actually legalizing discrimination, for it is evident that patients who offer substantial donations would receive better care than those who don't. Even more, such a system would generate institutional pressure upon the treating physician in order to determine him to positively discriminate in favor of the donating patient – which, due to the scarcity of available resources, means, in turn, negative discrimination against all the other patients.

CONCLUSION

Some questions that may remain to those outside the medical system about the phenomenon of discrimination against vulnerable persons, manifested as conditioning access to medical services, to the treatment or surgical intervention that may save the patient's life, upon payment of bribes, are: How does it happen that a physician, who is being paid from public money in order to do his job, can solicit bribes from the more disadvantaged category of his patients? How can one, whose calling is to care for the sick, to condition the fulfillment of his duty, which – I repeat – he is being paid to do, in such cases that need most to be protected, that of vulnerable persons, those suffering from grave illness? How can he have a tranquil consciousness, playing thus with people's lives, with the life of those resting on a knife's edge? How can he be still called a physician when doing this?

A change to the better, affirming the equality of individuals and the respect owed to human beings as such, through the ending of discrimination and undue privilege manifested as preferential treatment illegally given to certain patients (relatives, close relations and those who could afford the bribes), may start, in my opinion, not out of fear of the juridical sanctions established for breaking the laws that

regulate medical practice, but from the interiority of the consciousness of the individual physician. Without personal involvement rising out from love for human kind, from the respect people are owed, without the pleasure felt by the physician when going daily to his work, without the desire to help people by providing them with quality medical care – without all these, the texts of the law and of the deontological code of the profession would remain empty theory, like scraps of paper stashed in a drawer and taken out only for justification when irregularities come under public scrutiny. Putting into application the demands of the legislation and those of the medical code of deontology helps prevent unethical behaviors and practices, one of which is that of discrimination against patients – either due to their disabilities, or to ethnical, racial, age or socio-economic criteria, or to personal antipathies against them –, a phenomenon accentuated by that of corruption.

In Romania, the National Council for Combating Discrimination is the organism that deals with the prevention of acts of discrimination (through public campaigns aimed at informing citizens on their human rights, on the effects of discrimination and of the effects of disrespecting the principle of equality), the investigation, ascertainment and sanctioning of acts of discrimination, as well as providing assistance services to victims of discrimination (explaining them the legislation, providing guidance in the redaction of petitions). The “Health and Non-Discrimination” campaign, implemented by the (non-governmental) Association for Social Development and Inclusion, is proof that Romania, as a state of right, fights against discrimination, against the differentiation of medical treatment provided to certain social classes or persons, and for enforcing the respect owed to the rights and freedoms of people, for the practical application of the principle of equality of people to any situation, for the right of every citizen to health, through

free access to medical services, for the right of disabled persons to access the work market, in accord with their capacities and abilities. The purpose of the campaign was to render people conscious on the problem of discrimination in contemporary society, on its effects and how people may be affected by it.

BIBLIOGRAPHY

1. Trif, AlmoșBela, Astărăstoe, Vasile. *Responsabilitatea juridică medicală în România. Premise pentru un viitor drept medical*. Iași: Editura Polirom, 2000, pp.47-51, 117-131, 157-158, 191-206.
2. Singer. Peter. *Tratat de etică*. Iași: Editura Polirom, 2006, pp.365-374.
3. Astărăstoe, Vasile. "Este necesară o analiză etică a sistemului de sănătate românesc?". In *Romanian Journal of Bioethics*, vol. 8 (2010), no. 1.
4. Dezideriu, G., Vicol, C. "Interzicerea discriminării în UE și relevanța acestui principiu în exercitarea profesiei medicale". In *Romanian Journal of Bioethics*, vol. 9 (2011), no. 2.
5. Gavrilovici, C. "Relația medic-pacient-sistem de sănătate-societate". In *Romanian Journal of Bioethics*, vol. 5 (2007), no. 4.
6. Ioan, B. "Asistența medicală transfrontalieră și drepturile pacientului în Europa". In *Romanian Journal of Bioethics*, vol. 6 (2008), no. 3.
7. Mazilu, L. "Probleme de etică în comunicare cu pacientul oncologic". In *Romanian Journal of Bioethics*, vol. 8 (2010), no.3.
8. Oprea, L. "Aspecte etice ale inegalităților sociale în îngrijirile medicale". In *Romanian Journal of Bioethics*, vol.8 (2010), no. 2.

9. Vicol, M., Dezideriu G. "Nondiscriminarea grupurilor vulnerabile: de la etică la responsabilitate medicală". In *Romanian Journal of Bioethics*, vol. 9 (2011), no. 4.
10. Vicol, M. "De la vulnerabilitate la discriminare în sistemul de sănătate". In *Romanian Journal of Bioethics*, vol. 9 (2011), no. 2.
11. Vicol, C. "Dreptul la sănătate: de la vulnerabilitate la protecție". În *Romanian Journal of Bioethics*, vol. 8 (2010), no. 3.
12. Toader, T., Toader, E. "Drepturile pacientului versus obligațiile corpului medical". In *Romanian Journal of Bioethics*, vol. 1 (2007), no. 3.
13. The Universal Declaration of Human Rights (1948).
14. The Code of Romanian Medical Deontology.
15. Law no. 46/21 January 2003 regarding the patient's rights.
16. Law no. 95/14 April 2006 regarding the reform in the medical field.
17. Government Ordinance no. 137/2000 on preventing and sanctioning all stored forms of discrimination.
18. Article no. 254 from the Penal Code of Romania: Taking bribes and Article no. 256: Receiving undue benefits.
19. The report on the implementation of Framework Directive (2000/78/CE) in Romania 2003-2010, pp. 54-99.
20. The report on the implementation of Racial Directive in Romania 2003-2010, pp 9-14.
21. National Council for Combating Discrimination: www.cncd.org.ro
22. <http://guides.library.jhu.edu/c.php?g=202502&p=1335755>